

AMENDMENTS TO LB 933

Introduced by Schrock, 38

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Section 1. A control authority may direct and carry out
4 projects of control for one or more specific noxious weeds without
5 individual notice as prescribed in section 2-955 if the control
6 authority has caused publication of notices of such project as
7 provided in this section. The notice shall be published in one
8 or more newspapers of general circulation throughout the area
9 over which such control authority has jurisdiction and shall be
10 published weekly for four successive weeks prior to the project
11 commencement date specified in the notice for the control project.
12 Such notice shall state the noxious weed or weeds to be controlled
13 by the project, the date the project will commence, and the
14 approximate period of time when the project will be carried out. In
15 no event shall a fine or lien be assessed against a landowner as
16 prescribed in section 2-955 for a project under this section unless
17 the control authority has caused individual notice to be served
18 upon the landowner as specified in such section.

19 Sec. 2. Section 2-945.01, Revised Statutes Cumulative
20 Supplement, 2004, is amended to read:

21 2-945.01 Sections 2-945.01 to 2-966 and section 1 of this
22 act shall be known and may be cited as the Noxious Weed Control
23 Act.

1 Sec. 3. Section 2-1588, Revised Statutes Cumulative
2 Supplement, 2004, is amended to read:

3 2-1588 (1) Any money in the Nebraska Resources
4 Development Fund may be allocated by the commission in accordance
5 with sections 2-1586 to 2-1595 for utilization by the department,
6 by any state office, agency, board, or commission, or by any
7 political subdivision of the state which has the authority to
8 develop the state's water and related land resources. Such money
9 may be allocated in the form of grants or loans or for acquiring
10 state interests in water and related land resources programs and
11 projects undertaken within the state. The allocation of funds to
12 a program or project in one form shall not of itself preclude
13 additional allocations in the same or any other form to the same
14 program or project. Funds may also be allocated to assist natural
15 resources districts in the preparation of management plans as
16 provided in section 46-709. Funds so allocated shall not be subject
17 to sections 2-1589 to 2-1595.

18 (2) No project, including all related phases, segments,
19 parts, or divisions, shall receive more than ten million dollars
20 from the fund. On July 1, 1994, and ~~each year thereafter~~ of
21 each year, the director shall adjust the project cost and payment
22 limitation of this subsection by an amount equal to the average
23 percentage change in ~~the federal Department of Commerce, Bureau of~~
24 ~~the Census, Composite Construction Cost Index~~ a readily available
25 construction cost index for the prior three years.

26 (3) Prior to September 1 of each even-numbered year, a
27 biennial report shall be made to the Governor and the Clerk of

1 the Legislature describing the work accomplished by the use of
2 such development fund during the immediately preceding two-year
3 period. The report shall include a complete financial statement.
4 Each member of the Legislature shall receive a copy of such report
5 upon making a request to the director.

6 Sec. 4. Section 2-3225, Revised Statutes Cumulative
7 Supplement, 2004, is amended to read:

8 2-3225 (1)(a) Each district shall have the power and
9 authority to levy a tax of not to exceed four and one-half cents
10 on each one hundred dollars of taxable valuation annually on all of
11 the taxable property within such district unless a higher levy is
12 authorized pursuant to section 77-3444.

13 (b) Each district shall also have the power and authority
14 to levy a tax equal to the dollar amount by which its restricted
15 funds budgeted to administer and implement ground water management
16 activities and integrated management activities under the Nebraska
17 Ground Water Management and Protection Act exceed its restricted
18 funds budgeted to administer and implement ground water management
19 activities and integrated management activities for FY2003-04, not
20 to exceed one cent on each one hundred dollars of taxable valuation
21 annually on all of the taxable property within the district.

22 (c) In addition to the power and authority granted in
23 subdivisions (1)(a) and (b) of this section, each district located
24 in a river basin, subbasin, or reach that has been determined
25 to be fully appropriated pursuant to section 46-714 or designated
26 overappropriated pursuant to section 46-713 by the Department of
27 Natural Resources shall also have the power and authority to

1 levy a tax equal to the dollar amount by which its restricted
2 funds budgeted to administer and implement ground water management
3 activities and integrated management activities under the Nebraska
4 Ground Water Management and Protection Act exceed its restricted
5 funds budgeted to administer and implement ground water management
6 activities and integrated management activities for FY2005-06, not
7 to exceed three cents on each one hundred dollars of taxable
8 valuation on all of the taxable property within the district for
9 fiscal year 2006-07 and not to exceed two cents on each one
10 hundred dollars of taxable valuation annually on all of the taxable
11 property within the district for fiscal years 2007-08 and 2008-09.

12 (2) The proceeds of such tax shall be used, together with
13 any other funds which the district may receive from any source, for
14 the operation of the district. When adopted by the board, the levy
15 shall be certified by the secretary to the county clerk of each
16 county which in whole or in part is included within the district.
17 Such levy shall be handled by the counties in the same manner
18 as other levies, and proceeds shall be remitted to the district
19 treasurer. Such levy shall not be considered a part of the general
20 county levy and shall not be considered in connection with any
21 limitation on levies of such counties.

22 Sec. 5. Section 2-3240, Revised Statutes Cumulative
23 Supplement, 2004, is amended to read:

24 2-3240 In matters pertaining to applications for
25 appropriation and use of surface water, construction of dams,
26 drainage and channel rectification projects, and installation
27 of ground water wells, districts shall comply with Chapter 46,

1 articles 2, ~~and~~ 6, and 7, and the applicable rules and regulations
2 of the department.

3 Sec. 6. The Storm Water Management Plan Program is
4 created. The purpose of the program is to facilitate and fund
5 the duties of cities and counties under the federal Clean
6 Water Act, 33 U.S.C. 1251 et seq., as such act existed on
7 January 1, 2006, regarding storm water runoff under the National
8 Pollutant Discharge Elimination System requirements. The Storm
9 Water Management Plan Program shall function as a grant program
10 administered by the Department of Environmental Quality, using
11 funds appropriated for the program. The department shall deduct
12 from funds appropriated amounts sufficient to reimburse itself for
13 its costs of administration of the grant program. Any city or
14 county whereapplying for a grant under the program shall have a
15 storm water management plan approved by the department which meets
16 the requirements of the National Pollutant Discharge Elimination
17 System. Grant applications shall be made to the department on forms
18 prescribed by the department. Grant funds shall be distributed by
19 the department as follows:

20 (1) Not less than eighty percent of the funds available
21 for grants under this section shall be provided to cities and
22 counties in urbanized areas, as identified in 64 Federal Register
23 68822, as such section existed on January 1, 2006, that apply
24 for grants and meet the requirements of this section. Grants made
25 pursuant to this subdivision shall be distributed proportionately
26 based on the population of applicants within such category, as
27 determined by the most recent federal census update or recount

1 certified by the United States Department of Commerce, Bureau of
2 the Census. Any funds available for grants under this subdivision
3 and not awarded by the end of a calendar year shall be available
4 for grants in the following year; and

5 (2) Not more than twenty percent of the funds available
6 for grants under this section shall be provided to cities and
7 counties outside of urbanized areas, as identified in 64 Federal
8 Register 68822, as such section existed on January 1, 2006, with
9 populations greater than ten thousand inhabitants as determined by
10 the most recent federal census update or recount certified by the
11 United States Department of Commerce, Bureau of the Census, that
12 apply for grants and meet the requirements of this section. Grants
13 under this subdivision shall be distributed proportionately based
14 on the population of applicants within this category as determined
15 by the most recent federal census update or recount certified by
16 the United States Department of Commerce, Bureau of the Census.
17 Any funds available for grants pursuant to this subdivision which
18 have not been awarded at the end of each calendar year shall be
19 available for awarding grants pursuant to subdivision (1) of this
20 section.

21 Any city or county receiving a grant under subdivision
22 (1) or (2) of this section shall contribute matching funds equal to
23 twenty percent of the grant amount.

24 Sec. 7. Section 46-229.02, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 46-229.02 (1) If, based upon the results of a field
27 investigation or upon information, however obtained, the department

1 makes preliminary determinations (a) that an appropriation has not
2 been used, in whole or in part, for a beneficial or useful purpose
3 or having been so used at one time has ceased to be used, in whole
4 or in part, for such purpose for more than five consecutive years
5 and (b) that the department knows of no reason that constitutes
6 sufficient cause, as provided in section 46-229.04, for such nonuse
7 or that such nonuse has continued beyond the additional time
8 permitted because of the existence of any applicable sufficient
9 cause, the department shall serve notice of such preliminary
10 determinations upon the owner or owners of such appropriation and
11 upon any other person who is an owner of the land under such
12 appropriation. Such notice shall contain the information required
13 by section 46-229.03, shall be provided in the manner required by
14 such section, and shall be posted on the department's web site.
15 Each owner of the appropriation and any owner of the land under
16 such appropriation shall have thirty days after the mailing or
17 last publication, as applicable, of such notice to notify the
18 department, on a form provided by the department, that he or
19 she contests the department's preliminary determination of nonuse
20 or the department's preliminary determination of the absence of
21 sufficient cause for such nonuse. Such notification shall indicate
22 the reason or reasons the owner is contesting the department's
23 preliminary determination and include any information the owner
24 believes is relevant to the issues of nonuse or sufficient cause
25 for such nonuse.

26 (2) If no owner of the appropriation or of the land
27 under the appropriation provides notification to the department

1 in accordance with subsection (1) of this section, the director
2 may issue an order canceling the appropriation in whole or in
3 part. The extent of such cancellation shall not exceed the extent
4 described in the department's notice to the owner or owners in
5 accordance with subsection (1) of this section. A copy of the order
6 canceling the appropriation, or part thereof, shall be posted on
7 the department's web site and shall be provided to the owner or
8 owners of the appropriation and to any other owner of the land
9 under the appropriation in the same manner that notices are to be
10 given in accordance with subsection (2), (3), or (4) of section
11 46-229.03, as applicable. No cancellation under this subsection
12 shall prohibit an irrigation district, a reclamation district,
13 a public power and irrigation district, or a mutual irrigation
14 company or canal company from asserting the rights provided by
15 subsections (5) and (6) of section 46-229.04.

16 (3) If an owner of the appropriation provides
17 notification to the department in accordance with subsection (1)
18 of this section, the department shall review the owner's stated
19 reasons for contesting the department's preliminary determination
20 and any other information provided with the owner's notice. If
21 the department determines that the owner has provided sufficient
22 information for the department to conclude that the appropriation
23 should not be canceled, in whole or in part, it shall inform the
24 owners of the appropriation, and any other owners of the land under
25 the appropriation, of such determination.

26 (4) If the department determines that an owner has
27 provided sufficient information to support the conclusion that the

1 appropriation should be canceled only in part and if (a) the
2 owner or owners filing the notice of contest agree in writing
3 to such cancellation in part and (b) such owner or owners are
4 the only known owners of the appropriation and of the land under
5 the appropriation, the director may issue an order canceling the
6 appropriation to the extent agreed to by the owner or owners and
7 shall provide a copy of such order to such owner or owners.

8 (5) If the department determines that subsections (2),
9 (3), and (4) of this section do not apply, it shall schedule and
10 conduct a hearing on the cancellation of the appropriation in whole
11 or in part. Notice of the hearing shall be provided to the owner or
12 owners who filed notices with the department pursuant to subsection
13 (1) of this section, to any other owner of the appropriation known
14 to the department, and to any other owner of the land under the
15 appropriation. The notice shall be posted on the department's web
16 site and shall be served or published, as applicable, in the manner
17 provided in subsection (2), (3), or (4) of section 46-229.03, as
18 applicable.

19 (6) Following a hearing conducted in accordance with
20 subsection (5) of this section and subsection (1) of section
21 46-229.04, the director shall render a decision by order. A copy
22 of the order shall be provided to the owner or owners of the
23 appropriation and to any other person who is an owner of the land
24 under the appropriation. The copy of the order shall be posted
25 on the department's web site and shall be served or published, as
26 applicable, in the same manner that notices are to be given in
27 accordance with subsection (2), (3), or (4) of section 46-229.03,

1 as applicable, except that if publication is required, it shall be
2 sufficient for the department to publish notice that an order has
3 been issued. Any such published notice shall identify the land or
4 lands involved and shall provide the address and telephone number
5 that may be used to obtain a copy of the order.

6 (7) A water appropriation that has not been perfected
7 pursuant to the terms of the permit may be canceled by the
8 department without complying with sections 46-229.01 to 46-229.04
9 if the owner of such appropriation fails to comply with any of the
10 conditions of approval in the permit, except that this subsection
11 does not apply to appropriations to which subsection (2) of section
12 46-237 applies.

13 Sec. 8. Section 46-229.03, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 46-229.03 (1) The notice provided by the department
16 in accordance with subsection (1) or (5) of section 46-229.02
17 shall contain: (a) A description of the appropriation; (b) the
18 number assigned to the appropriation by the department; (c) the
19 date of priority; (d) the point of diversion; (e) if the notice
20 is published, the section or sections of land which contain
21 the lands located under such appropriation; (f) if the notice
22 is served by personal service or by registered or certified
23 mail, a description of the lands which are located under such
24 appropriation, a description of the information used by the
25 department to reach the preliminary determinations of nonuse,
26 and a copy of section 46-229.04; (g) a description of the owner's
27 options in response to the notice; (h) a department telephone

1 number which any person may call during normal business hours
2 for more information regarding the owner's rights and options,
3 including what constitutes sufficient cause for nonuse; (i) ~~if the~~
4 ~~notice is provided in accordance with subsection (1) of section~~
5 ~~46-229.02 and is mailed,~~ a copy of the form that such owner may
6 file to ~~request a departmental hearing;~~ ~~(j) if the notice is~~
7 ~~provided in accordance with subsection (1) of section 46-229.02~~
8 ~~and is published,~~ contest such determination, if notice is provided
9 in accordance with subsection (1) of section 46-229.02 and is
10 mailed; (j) the location where the owner may obtain a form to file
11 to request a departmental hearing contest such determination, if
12 notice is provided in accordance with subsection (1) of section
13 46-229.02 and is published; and (k) if the notice is provided
14 in accordance with subsection (5) of section 46-229.02, the date,
15 time, and location of the hearing.

16 (2) For any owner whose name and address are known to
17 the department or can be reasonably obtained by the department, the
18 notice shall be served by personal service or by registered mail or
19 certified mail. Any landowner's name or address shall be considered
20 reasonably obtainable if that person is listed as an owner of the
21 land involved, on the records of the county clerk or register of
22 deeds for the county in which the land is located.

23 (3) For any owner whose name and address are not known to
24 the department and cannot reasonably be obtained by the department,
25 such notice shall be served by publication in a legal newspaper
26 published or of general circulation in any county in which the
27 place of diversion is located and in a legal newspaper published

1 or of general circulation in each county containing land for which
2 the right to use water under the appropriation is subject to
3 cancellation. Each such publication shall be once each week for
4 three consecutive weeks.

5 (4) Landowners whose property under such appropriation is
6 located within the corporate limits of a city or village shall
7 be served by the publication of such notice in a legal newspaper
8 published or of general circulation in the county in which the city
9 or village is located. The notice shall be published once each week
10 for three consecutive weeks.

11 Sec. 9. Section 46-229.04, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 46-229.04 (1) At such hearing the verified field
14 investigation report of an employee of the department, or such
15 other report or information that is relied upon by the department
16 to reach the preliminary determination of nonuse, shall be prima
17 facie evidence for the forfeiture and annulment of such water
18 appropriation. If no person appears at the hearing, such water
19 appropriation or unused part thereof shall be declared forfeited
20 and annulled. If an interested person appears and contests the
21 same, the department shall hear evidence, and if it appears that
22 such water has not been put to a beneficial use or has ceased to
23 be used for such purpose for more than five consecutive years, the
24 same shall be declared canceled and annulled unless the department
25 finds that (a) there has been sufficient cause for such nonuse as
26 provided for in subsection (2), (3), or (4) of this section or (b)
27 subsection (5) or (6) of this section applies.

1 (2) Sufficient cause for nonuse shall be deemed to exist
2 for up to thirty consecutive years if such nonuse was caused by the
3 unavailability of water for that use. For a river basin, subbasin,
4 or reach that has been designated as overappropriated pursuant
5 to section 46-713 or determined by the department to be fully
6 appropriated pursuant to section 46-714, the period of time within
7 which sufficient cause for nonuse because of the unavailability
8 of water may be deemed to exist may be extended beyond thirty
9 years by the department upon petition therefor by the owner of
10 the appropriation if the department determines that an integrated
11 management plan being implemented in the river basin, subbasin, or
12 reach involved is likely to result in restoration of a usable water
13 supply for the appropriation.

14 (3) Sufficient cause for nonuse shall be deemed to exist
15 indefinitely if such nonuse was the result of one or more of the
16 following:

17 (a) For any tract of land under separate ownership, the
18 available supply was used but on only part of the land under the
19 appropriation because of an inadequate water supply;

20 (b) The appropriation is a storage appropriation and
21 there was an inadequate water supply to provide the water for the
22 storage appropriation or less than the full amount of the storage
23 appropriation was needed to keep the reservoir full; or

24 (c) The appropriation is a storage-use appropriation and
25 there was an inadequate water supply to provide the water for the
26 appropriation or use of the storage water was unnecessary because
27 of climatic conditions.

1 (4) Sufficient cause for nonuse shall be deemed to exist
2 for up to fifteen consecutive years if such nonuse was a result of
3 one or more of the following:

4 (a) Federal, state, or local laws, rules, or regulations
5 temporarily prevented or restricted such use;

6 (b) Use of the water was unnecessary because of climatic
7 conditions;

8 (c) Circumstances were such that a prudent person,
9 following the principles of good husbandry, would not have been
10 expected to use the water;

11 (d) The works, diversions, or other facilities essential
12 to use the water were destroyed by a cause not within the control
13 of the owner of the appropriation and good faith efforts to repair
14 or replace the works, diversions, or facilities have been and are
15 being made;

16 (e) The owner of the appropriation was in active
17 involuntary service in the armed forces of the United States
18 or was in active voluntary service during a time of crisis;

19 (f) Legal proceedings prevented or restricted use of the
20 water; or

21 (g) The land subject to the appropriation is under
22 an acreage reserve program or production quota or is otherwise
23 withdrawn from use as required for participation in any federal or
24 state program or such land previously was under such a program but
25 currently is not under such a program and there have been not more
26 than five consecutive years of nonuse on that land since that land
27 was last under that program.

1 The department may specify by rule and regulation other
2 circumstances that shall be deemed to constitute sufficient cause
3 for nonuse for up to fifteen years.

4 (5) When an appropriation is held in the name of
5 an irrigation district, reclamation district, public power and
6 irrigation district, or mutual irrigation company or canal company
7 and the director determines that water under that appropriation
8 has not been used on a specific parcel of land for more than
9 five years and that no sufficient cause for such nonuse exists,
10 the right to use water under that appropriation on that parcel
11 shall be terminated and notice of the termination shall be posted
12 on the department's web site and shall be given in the manner
13 provided in subsection (2), (3), or (4) of section 46-229.03. The
14 district or company holding such right shall have five years after
15 the determination, or five years after an order of cancellation
16 issued by the department following the filing of a voluntary
17 relinquishment of the water appropriation that has been signed by
18 the landowner and the appropriator of record, to assign the right
19 to use that portion of the appropriation to other land within
20 and the district or the area served by the district or company
21 or company, to file an application for a transfer in accordance
22 with section 46-290, or to transfer the right in accordance with
23 sections 46-2,127 to 46-2,129. The department shall issue its order
24 of cancellation within sixty days after receipt of the voluntary
25 relinquishment. The department shall be notified of any such
26 assignment within thirty days ~~thereafter~~ after such assignment. If
27 the district or company does not assign the right to use that

1 portion of the appropriation to other land, does not file an
2 application for a transfer within the five-year period, or does not
3 notify the department within thirty days after any such assignment,
4 that portion of the appropriation shall be canceled without further
5 proceedings by the department and the district or company involved
6 shall be so notified by the department. During the time within
7 which assignment of a portion of an appropriation is pending, the
8 allowable diversion rate for the appropriation involved shall be
9 reduced, as necessary, to avoid inconsistency with the rate allowed
10 by section 46-231 or with any greater rate previously approved
11 for such appropriation by the director in accordance with section
12 46-229.06.

13 (6) When it is determined by the director that an
14 appropriation, for which the location of use has been temporarily
15 transferred in accordance with sections 46-290 to 46-294, has not
16 been used at the new location for more than five years and that
17 no sufficient cause for such nonuse exists, the right to use that
18 appropriation at the temporary location of use shall be terminated.
19 Notice of that termination shall be posted on the department's
20 web site and shall be given in the manner provided in subsection
21 (2), (3), or (4) of section 46-229.03. The right to reinitiate
22 use of that appropriation at the location of use prior to the
23 temporary transfer shall continue to exist for five years after the
24 director's determination, but if such use is not reinitiated at
25 that location within such five-year period, the appropriation shall
26 be subject to cancellation in accordance with sections 46-229 to
27 46-229.04.

1 (7) If at the time of a hearing conducted in accordance
2 with subsection (1) of this section there is an application for
3 incidental or intentional underground water storage pending before
4 the department and filed by the owner of the appropriation, the
5 proceedings shall be consolidated.

6 Sec. 10. Section 46-290, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 46-290 (1)(a) Except as provided in this section and
9 sections 46-2,120 to 46-2,130, any person having a permit to
10 appropriate water for beneficial purposes issued pursuant to
11 sections 46-233 to 46-235, 46-240.01, 46-241, ~~ex~~ 46-242, or 46-637
12 and who desires (i) to transfer the use of such appropriation to
13 a location other than the location specified in the permit, (ii)
14 to change that appropriation to a different type of appropriation
15 as provided in subsection (3) of this section, or (iii) to change
16 the purpose for which the water is to be used under a natural-flow,
17 storage, or storage-use appropriation to a purpose not at that time
18 permitted under the appropriation shall apply for approval of such
19 transfer or change to the Department of Natural Resources.

20 (b) The application for such approval shall contain (i)
21 the number assigned to such appropriation by the department, (ii)
22 the name and address of the present holder of the appropriation,
23 (iii) if applicable, the name and address of the person or entity
24 to whom the appropriation would be transferred or who will be
25 the user of record after a change in the location of use, type
26 of appropriation, or purpose of use under the appropriation, (iv)
27 the legal description of the land to which the appropriation is

1 now appurtenant, (v) the name and address of each holder of a
2 mortgage or deed of trust for the land to which the appropriation
3 is now appurtenant, (vi) if applicable, the legal description of
4 the land to which the appropriation is proposed to be transferred,
5 (vii) if a transfer is proposed, whether other sources of water
6 are available at the original location of use and whether any
7 provisions have been made to prevent either use of a new source
8 of water at the original location or increased use of water from
9 any existing source at that location, (viii) if applicable, the
10 legal descriptions of the beginning and end of the stream reach
11 to which the appropriation is proposed to be transferred for the
12 purpose of augmenting the flows in that stream reach, (ix) if a
13 proposed transfer is for the purpose of increasing the quantity
14 of water available for use pursuant to another appropriation, the
15 number assigned to such other appropriation by the department, (x)
16 the purpose of the current use, (xi) if a change in purpose of
17 use is proposed, the proposed purpose of use, (xii) if a change in
18 the type of appropriation is proposed, the type of appropriation to
19 which a change is desired, (xiii) if a proposed transfer or change
20 is to be temporary in nature, the duration of the proposed transfer
21 or change, and (xiv) such other information as the department by
22 rule and regulation requires.

23 (2) If a proposed transfer or change is to be temporary
24 in nature, a copy of the proposed agreement between the current
25 appropriator and the person who is to be responsible for use of
26 water under the appropriation while the transfer or change is in
27 effect shall be submitted at the same time as the application.

1 (3) Regardless of whether a transfer or a change in
2 the purpose of use is involved, the following changes in type of
3 appropriation, if found by the Director of Natural Resources to
4 be consistent with section 46-294, may be approved subject to the
5 following:

6 (a) A natural-flow appropriation for direct out-of-stream
7 use may be changed to a natural-flow appropriation for aboveground
8 reservoir storage or for intentional underground water storage;

9 (b) A natural-flow appropriation for intentional
10 underground water storage may be changed to a natural-flow
11 appropriation for direct out-of-stream use or for aboveground
12 reservoir storage;

13 (c) A natural-flow appropriation for direct out-of-stream
14 use, for aboveground reservoir storage, or for intentional
15 underground water storage may be changed to an instream
16 appropriation subject to sections 46-2,107 to 46-2,119 if the
17 director determines that the resulting instream appropriation would
18 be consistent with subdivisions (2), (3), and (4) of section
19 46-2,115;

20 (d) A natural-flow appropriation for direct out-of-stream
21 use, for aboveground reservoir storage, or for intentional
22 underground water storage may be changed to an appropriation for
23 induced ground water recharge if the director determines that the
24 resulting appropriation for induced ground water recharge would be
25 consistent with subdivisions (2)(a)(i) and (ii) of section 46-235;
26 and

27 (e) The incidental underground water storage portion,

1 whether or not previously quantified, of a natural-flow or
2 storage-use appropriation may be separated from the direct-use
3 portion of the appropriation and may be changed to a natural-flow
4 or storage-use appropriation for intentional underground water
5 storage at the same location if the historic consumptive use
6 of the direct-use portion of the appropriation is transferred
7 to another location or is terminated, but such a separation and
8 change may be approved only if, after the separation and change,
9 (i) the total permissible diversion under the appropriation will
10 not increase, (ii) the projected consequences of the separation
11 and change are consistent with the provisions of any integrated
12 management plan adopted in accordance with section 46-718 or 46-719
13 for the geographic area involved, and (iii) if the location of the
14 proposed intentional underground water storage is in a river basin,
15 subbasin, or reach designated as overappropriated in accordance
16 with section 46-713, the integrated management plan for that river
17 basin, subbasin, or reach has gone into effect, and that plan
18 requires that the amount of the intentionally stored water that is
19 consumed after the change will be no greater than the amount of the
20 incidentally stored water that was consumed prior to the change.
21 Approval of a separation and change pursuant to this subdivision
22 (e) shall not exempt any consumptive use associated with the
23 incidental recharge right from any reduction in water use required
24 by an integrated management plan for a river basin, subbasin, or
25 reach designated as overappropriated in accordance with section
26 46-713.

27 Whenever any change in type of appropriation is approved

1 pursuant to this subsection and as long as that change remains in
2 effect, the appropriation shall be subject to the statutes, rules,
3 and regulations that apply to the type of appropriation to which
4 the change has been made.

5 (4) The Legislature finds that induced ground water
6 recharge appropriations issued pursuant to sections 46-233 and
7 46-235 and instream appropriations issued pursuant to section
8 46-2,115 are specific to the location identified in the
9 appropriation. Neither type of appropriation shall be transferred
10 to a different location, changed to a different type of
11 appropriation, or changed to permit a different purpose of use.

12 (5) In addition to any other purposes for which transfers
13 and changes may be approved, such transfers and changes may
14 be approved if the purpose is (a) to augment the flow in a
15 specific stream reach for any instream use that the department has
16 determined, through rules and regulations, to be a beneficial use
17 or (b) to increase the frequency that a diversion rate or rate of
18 flow specified in another valid appropriation is achieved.

19 For any transfer or change approved pursuant to
20 subdivision (a) of this subsection, the department shall be
21 provided with a report at least every five years while such
22 transfer or change is in effect. The purpose of such report shall
23 be to indicate whether the beneficial instream use for which the
24 flow is augmented continues to exist. If the report indicates that
25 it does not or if no report is filed within sixty days after
26 the department's notice to the appropriator that the deadline
27 for filing the report has passed, the department may cancel its

1 approval of the transfer or change and such appropriation shall
2 revert to the same location of use, type of appropriation, and
3 purpose of use as prior to such approval.

4 (6) A quantified or unquantified appropriation for
5 incidental underground water storage may be transferred to a new
6 location along with the direct-use appropriation with which it is
7 recognized if the director finds such transfer to be consistent
8 with section 46-294 and determines that the geologic and other
9 relevant conditions at the new location are such that incidental
10 underground water storage will occur at the new location. The
11 director may request such information from the applicant as
12 is needed to make such determination and may modify any such
13 quantified appropriation for incidental underground water storage,
14 if necessary, to reflect the geologic and other conditions at the
15 new location.

16 (7) Unless an incidental underground water storage
17 appropriation is changed as authorized by subdivision (3)(e)
18 of this section or is transferred as authorized by subsection
19 (6) of this section or subsection (1) of section 46-291, such
20 appropriation shall be canceled or modified, as appropriate, by
21 the director to reflect any reduction in water that will be stored
22 underground as the result of a transfer or change of the direct-use
23 appropriation with which the incidental underground water storage
24 was recognized prior to the transfer or change.

25 Sec. 11. Section 46-291, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 46-291 (1) Upon receipt of an application filed under

1 section 46-290 for a transfer in the location of use of an
2 appropriation, the Department of Natural Resources shall review
3 it for compliance with this subsection. The Director of Natural
4 Resources may approve the application without notice or hearing
5 if he or she determines that: (a) The appropriation is used and
6 will continue to be used exclusively for irrigation purposes; (b)
7 the only lands involved in the proposed transfer are (i) lands
8 within the quarter section of land to which the appropriation is
9 appurtenant, (ii) lands within such quarter section of land and
10 one or more quarter sections of land each of which is contiguous
11 to the quarter section of land to which the appropriation is
12 appurtenant, or (iii) lands within the boundaries or service
13 area of and capable of service by the same irrigation district,
14 reclamation district, public power and irrigation district, or
15 mutual irrigation or canal company; (c) after the transfer, the
16 total number of acres irrigated under the appropriation will
17 be no greater than the number of acres that could legally be
18 irrigated under the appropriation prior to the transfer; (d) all
19 the land involved in the transfer is under the same ownership
20 or is within the same irrigation district, reclamation district,
21 public power and irrigation district, or mutual irrigation or canal
22 company; (e) the transfer will not result in a change in the
23 point of diversion; and (f) the transfer will not diminish the
24 water supply available for or otherwise adversely affect any other
25 water appropriator. If transfer of an appropriation with associated
26 incidental underground water storage is approved in accordance
27 with this subsection, the associated incidental underground water

1 storage also may be transferred pursuant to this subsection as
2 long as such transfer would continue to be consistent with the
3 requirements of this subsection. If necessary, the boundaries of
4 the incidental underground water storage area may be modified to
5 reflect any change in the location of that storage consistent with
6 such a transfer. Transfers shall not be approved pursuant to this
7 subsection until the department has adopted and promulgated rules
8 and regulations establishing the criteria it will use to determine
9 whether proposed transfers are consistent with subdivision (1)(f)
10 of this section.

11 (2) If after reviewing an application filed under section
12 46-290 the director determines that it cannot be approved pursuant
13 to subsection (1) of this section, he or she shall cause a notice
14 of such application to be posted on the department's web site,
15 to be sent by certified mail to each holder of a mortgage or
16 deed of trust that is identified by the applicant pursuant to
17 subdivision (1)(b)(v) of section 46-290 and to any entity owning
18 facilities currently used or proposed to be used for purposes
19 of diversion or delivery of water under the appropriation, and
20 to be published at the applicant's expense at least once each
21 week for three consecutive weeks in at least one newspaper of
22 general circulation in each county containing lands to which the
23 appropriation is appurtenant and, if applicable, in at least one
24 newspaper of general circulation in each county containing lands to
25 which the appropriation is proposed to be transferred.

26 (3) The notice shall contain: (a) A description of the
27 appropriation; (b) the number assigned to such appropriation in

1 the records of the department; (c) the date of priority; (d) if
2 applicable, a description of the land or stream reach to which
3 such water appropriation is proposed to be transferred; (e) if
4 applicable, the type of appropriation to which the appropriation
5 is proposed to be changed; (f) if applicable, the proposed change
6 in the purpose of use; (g) whether the proposed transfer or change
7 is to be permanent or temporary and, if temporary, the duration
8 of the proposed transfer or change; and (h) any other information
9 the director deems relevant and essential to provide the interested
10 public with adequate notice of the proposed transfer or change.

11 (4) The notice shall state (a) that any interested person
12 may object to and request a hearing on the application by filing
13 such objections in writing specifically stating the grounds for
14 each objection and (b) that any such objection and request shall be
15 filed in the office of the department within two weeks after the
16 date of final publication of the notice.

17 (5) Within the time period allowed by this section for
18 the filing of objections and requests for hearings, the county
19 board of any county containing land to which the appropriation
20 is appurtenant and, if applicable, the county board of any county
21 containing land to which the appropriation is proposed to be
22 transferred may provide the department with comments about the
23 potential economic impacts of the proposed transfer or change in
24 such county. The filing of any such comments by a county board
25 shall not make the county a party in the application process, but
26 such comments shall be considered by the director in determining
27 pursuant to section 46-294 whether the proposed transfer or change

1 is in the public interest.

2 Sec. 12. Section 46-294.01, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 46-294.01 Whenever a temporary transfer is approved in
5 accordance with sections 46-290 to 46-294, the ~~Department of~~
6 ~~Natural Resources shall~~ applicant shall, within sixty days after
7 the department's order of approval, cause copies of the following
8 to be filed with the county clerk or register of deeds of the
9 county in which the land subject to the appropriation prior to
10 the transfer is located: (1) The permit by which the appropriation
11 was established; (2) the agreement by which the temporary transfer
12 is to be effected; and (3) the order of the Director of Natural
13 Resources approving the temporary transfer. Whenever renewal of a
14 temporary transfer is approved pursuant to section 46-294.02, the
15 ~~department shall~~ applicant shall, within sixty days after such
16 approval, cause a copy of the order of the director approving such
17 renewal to be filed with the county clerk or register of deeds of
18 such county. Such documents shall be indexed to the land subject to
19 the appropriation prior to the transfer. ~~The costs of the filing~~
20 ~~and indexing shall be charged to the applicant for the transfer or~~
21 ~~renewal, and failure to pay such costs~~ applicant shall file with
22 the department, within ninety days after the department's order of
23 approval, proof of filing with the county clerk or register of
24 deeds. Failure to file such proof of filing within such ninety-day
25 time period shall be grounds for the director to negate any prior
26 approval of the transfer or renewal.

27 Sec. 13. Section 46-2,112, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 46-2,112 A permit to appropriate water for instream flows
3 shall be subject to review every fifteen years after it is granted.
4 Notice of a pending review shall be published in a newspaper
5 published or of general circulation in the area involved at least
6 once each week for three consecutive weeks, the last publication
7 to be not later than fourteen years and ten months after the
8 permit was granted or after the date of the director's action
9 following the last such review, whichever is later, and such notice
10 shall be mailed to the appropriator of record and posted on the
11 department's web site. The notice shall state that any interested
12 person may file comments relating to the review of the instream
13 appropriation or may request a hearing to present evidence relevant
14 to such review. Any such comments or request for hearing shall
15 be filed in the headquarters office of the department within six
16 weeks after the date of final publication of the notice. The
17 appropriator of record shall, within the six-week period, file
18 written documentation of the continued use of the appropriation.
19 If no requests for hearing are received and if the director is
20 satisfied with the information provided by the appropriator of
21 record that the appropriation continues to be beneficially used
22 and is in the public interest, the director shall issue an order
23 stating such findings. If requested by any interested person, or on
24 his or her own motion based on the comments and information filed,
25 the director shall schedule a hearing. ~~The~~ If a hearing is held,
26 the purpose of the hearing shall be to receive evidence regarding
27 whether the water appropriated under the permit still provides the

1 beneficial uses for which the permit was granted and whether the
2 permit is still in the public interest. The hearing shall proceed
3 under the rebuttable presumption that the appropriation continues
4 to provide the beneficial uses for which the permit was granted
5 and that the appropriation is in the public interest. After the
6 hearing, the director may by order modify or cancel, in whole or in
7 part, the instream appropriation.

8 Sec. 14. Section 46-2,136, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 46-2,136 The Water Policy Task Force shall discuss the
11 issues described in section 46-2,131 and such related issues as
12 it deems appropriate, shall identify options for resolution of
13 such issues, and shall make recommendations to the Legislature and
14 the Governor relating to any water policy changes the task force
15 deems desirable so long as the task force is authorized by the
16 Legislature.

17 The task force shall complete its work within eighteen
18 months after the Governor notifies the Legislature that all members
19 of the task force have been appointed and a meeting facilitator has
20 been selected.

21 Sec. 15. Section 46-602, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 46-602 (1) Each water well completed in this state on
24 or after July 1, 2001, excluding test holes and dewatering wells
25 to be used for less than ninety days, shall be registered with
26 the Department of Natural Resources as provided in this section
27 within sixty days after completion of construction of the water

1 well. The water well contractor as defined in section 46-1213
2 constructing the water well, or the owner of the water well if
3 the owner constructed the water well, shall file the registration
4 on a form made available by the department and shall also file
5 with the department the information from the well log required
6 pursuant to section 46-1241. The department shall, by January 1,
7 2002, provide water well contractors with the option of filing such
8 registration forms electronically. No signature shall be required
9 on forms filed electronically. The fee required by subsection (3)
10 of section 46-1224 shall be the source of funds for any required
11 fee to a contractor which provides the on-line services for such
12 registration. Any discount in the amount paid the state by a credit
13 card, charge card, or debit card company or a third-party merchant
14 bank for such registration fees shall be deducted from the portion
15 of the registration fee collected pursuant to section 46-1224.

16 (2)(a) If the newly constructed water well is a
17 replacement water well, the registration number of the water well
18 it replaces, if applicable, and the date the original water well
19 was or will be decommissioned shall be included on the registration
20 form. For purposes of this section, replacement water well means
21 a water well which (i) replaces an abandoned water well within
22 three years after the last operation of the abandoned water well or
23 replaces a water well that will not be used after construction of
24 the new water well and the original water well will be abandoned
25 within one year after such construction and (ii) is constructed to
26 provide water to the same tract of land served by the water well
27 being replaced.

1 (b) No water well shall be registered as a replacement
2 water well until the Department of Natural Resources has received
3 a properly completed notice of abandonment for the water well
4 being replaced. Such notice shall be completed by (i) the water
5 well contractor as defined in section 46-1213 who decommissions
6 the water well, (ii) the pump installation contractor as defined
7 in section 46-1209 who decommissions the water well, or (iii) the
8 owner if the owner decommissions a driven sandpoint well which is
9 on land owned by him or her for farming, ranching, or agricultural
10 purposes or as his or her place of abode. The Department of
11 Health and Human Services Regulation and Licensure shall, by
12 rule and regulation, determine which contractor or owner shall be
13 responsible for such notice in situations in which more than one
14 contractor or owner may be required to provide notice under this
15 subsection.

16 (3) For a series of two or more water wells completed and
17 pumped into a common carrier as part of a single site plan for
18 irrigation purposes, a registration form and a detailed site plan
19 shall be filed for each water well. The registration form shall
20 include the registration numbers of other water wells included in
21 the series if such water wells are already registered.

22 (4) A series of water wells completed for purposes
23 of installation of a ground heat exchanger for a structure
24 for utilizing the geothermal properties of the ground shall be
25 considered as one water well. One registration form and a detailed
26 site plan shall be filed for each such series.

27 (5) One registration form shall be required along with

1 a detailed site plan which shows the location of each such water
2 well in the site and a log from each such water well for water
3 wells constructed as part of a single site plan for (a) monitoring
4 ground water, obtaining hydrogeologic information, or extracting
5 contaminants from the ground, (b) water wells constructed as part
6 of remedial action approved by the Department of Environmental
7 Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and
8 (c) water well owners who have a permit issued pursuant to the
9 Industrial Ground Water Regulatory Act and also have an underground
10 injection control permit issued by the Department of Environmental
11 Quality.

12 (6) The department shall be notified by the owner of any
13 change in the ownership of a water well required to be registered
14 under this section. Notification shall be in such form and include
15 such evidence of ownership as the Director of Natural Resources
16 by rule and regulation directs. The department shall use such
17 notice to update the registration on file. The department shall not
18 collect a fee for the filing of the notice.

19 (7) The water well contractor or pump installation
20 contractor responsible therefor shall notify the department within
21 sixty days on a form provided by the department of any pump
22 installation or any modifications to the construction of the water
23 well or pump, after the initial registration of the well. A water
24 well owner shall notify the department within sixty days on a form
25 provided by the department of any other changes or any inaccuracies
26 in recorded water well information, including, but not limited to,
27 changes in use. The department shall not collect a fee for the

1 filing of the notice.

2 (8) Whenever a water well becomes an illegal water well
3 as defined in section 46-706, the owner of the water well shall
4 either correct the deficiency that causes the well to be an illegal
5 water well or shall cause the proper decommissioning of the water
6 well in accordance with rules and regulations adopted pursuant
7 to the Water Well Standards and Contractors' Licensing Act. The
8 water well contractor who decommissions the water well, the pump
9 installation contractor who decommissions the water well, or the
10 owner if the owner decommissions a driven sandpoint well which is
11 on land owned by him or her for farming, ranching, or agricultural
12 purposes or as his or her place of abode, shall provide a properly
13 completed notice of abandonment to the Department of Natural
14 Resources within sixty days. The Department of Health and Human
15 Services Regulation and Licensure shall, by rule and regulation,
16 determine which contractor or owner shall be responsible for such
17 notice in situations in which more than one contractor or owner may
18 be required to provide notice under this subsection. The Department
19 of Natural Resources shall not collect a fee for the filing of the
20 notice.

21 (9) Except for water wells which are used solely for
22 domestic purposes and were constructed before September 9, 1993,
23 and for test holes and dewatering wells used for less than ninety
24 days, each water well which was completed in this state before
25 July 1, 2001, and which is not registered on that date shall be an
26 illegal water well until it is registered with the Department of
27 Natural Resources. Such registration shall be completed by a water

1 well contractor or by the current owner of the water well, shall
2 be on forms provided by the department, and shall provide as much
3 of the information required by subsections (1) through (5) of this
4 section for registration of a new water well as is possible at the
5 time of registration.

6 (10) Water wells which are or were used solely for
7 injecting any fluid other than water into the underground water
8 reservoir, which were constructed before July 16, 2004, and which
9 have not been properly decommissioned on or before July 16, 2004,
10 shall be registered on or before July 1, 2005.

11 Sec. 16. Section 46-655.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 46-655.01 (1) A public water supplier as defined in
14 section 46-638 may obtain protection for a public water supply
15 wellfield from encroachment from other water wells by filing with
16 the Department of Natural Resources a notice of intent to consider
17 a wellfield. The notice of intent shall include:

18 (a) The legal description of the land being considered as
19 a public water supply wellfield; and

20 (b) Written consent of the owner of the land considered
21 for a public water supply wellfield, allowing the public water
22 supplier to conduct an evaluation as to whether such land is
23 suitable for a public water supply wellfield.

24 (2) A notice of intent filed under this section shall be
25 limited to a contiguous tract of land. No public water supplier
26 shall have more than three notices of intent under this section on
27 file with the department at any one time.

1 (3) A notice of intent filed under this section shall
2 expire one year after the date of filing and may be renewed for one
3 additional year by filing with the department a notice of renewal
4 of the original notice of intent filed under this section before
5 expiration of the original notice of intent.

6 (4) At the time a notice of intent or a notice of renewal
7 is filed with the department, the public water supplier shall:

8 (a) Provide a copy of the notice of intent or notice of
9 renewal to the owners of land ~~adjoining the land being considered~~
10 ~~for a wellfield falling within the spacing protection provided by~~
11 subsection (5) (a) of this section pursuant to the notice;

12 (b) Provide a copy of the notice to the natural resources
13 district or districts within which the land being considered for a
14 wellfield is located; and

15 (c) Publish a copy of the notice in a newspaper of
16 general circulation in the area in which the wellfield is being
17 considered.

18 (5) (a) Except as provided in subdivisions (b) and (c) of
19 this subsection, during the time that a notice of intent under this
20 section is in effect, no person may drill or construct a water
21 well, as defined in section 46-601.01, within the following number
22 of feet of the boundaries of the land described in the notice of
23 intent, whichever is greater:

24 (i) One thousand feet; or

25 (ii) The maximum number of feet specified in any
26 applicable regulations of a natural resources district that a
27 well of a public water supplier must be spaced from another well.

1 (b) Any person who, at least one hundred eighty days
2 prior to filing a notice of intent, obtained a valid permit from
3 a natural resources district to drill or construct a water well
4 within the area subject to the protection provided by this section
5 is not prohibited from drilling or constructing a water well.

6 (c) The public water supplier may waive the protection
7 provided by this section and allow a person to drill or construct
8 a new or replacement water well within the area subject to the
9 protection provided by this section.

10 (6) Within thirty days after the public water supplier
11 reaches a determination that the land described in a particular
12 notice of intent is not suitable for a public water supply
13 wellfield, the public water supplier shall notify the Department
14 of Natural Resources, all affected natural resources districts,
15 the owner of the land described in the notice of intent, and
16 the owners of ~~the contiguous tracts of land~~ all land falling
17 within the spacing protection provided by subsection (5)(a) of this
18 section pursuant to the notice of intent of such determination.
19 Upon receipt by the department of the notice of such determination,
20 the notice of intent that contains the description of such tract
21 of land shall terminate immediately, notwithstanding any other
22 provision of this section.

23 Sec. 17. Section 46-683, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 46-683 (1) The director shall issue a written order
26 containing specific findings of fact either granting or denying a
27 permit. The director shall grant a permit only if he or she finds

1 that the applicant's withdrawal and any transfer of ground water
2 are in the public interest. In determining whether the withdrawal
3 and transfer, if any, are in the public interest, the director's
4 considerations shall include, but not be limited to:

5 (a) Possible adverse effects on existing surface or
6 ground water users;

7 (b) The effect of the withdrawal and any transfer of
8 ground water on surface or ground water supplies needed to meet
9 reasonably anticipated domestic and agricultural demands in the
10 area of the proposed ground water withdrawal;

11 (c) The availability of alternative sources of surface or
12 ground water reasonably accessible to the applicant in or near the
13 region of the proposed withdrawal or use;

14 (d) The economic benefit of the applicant's proposed use;

15 (e) The social and economic benefits of existing uses of
16 surface or ground water in the area of the applicant's proposed use
17 and any transfer;

18 (f) Any waivers of liability from existing users filed
19 with the director;

20 (g) The effects on interstate compacts or decrees and
21 the fulfillment of the provisions of any other state contract or
22 agreement; and

23 (h) Other factors reasonably affecting the equity of
24 granting the permit.

25 (2) The director may grant a permit for less water than
26 requested by the applicant. The director may also impose reasonable
27 conditions on the manner and timing of the ground water withdrawals

1 and on the manner of any transfer of ground water which the
2 director deems necessary to protect existing users of water. ~~The~~
3 If a hearing is held, the director shall issue such written order
4 within ninety days of the hearing.

5 Sec. 18. Section 46-691.03, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 46-691.03 (1) Any person intending to withdraw ground
8 water from any water well located in the State of Nebraska,
9 transport that water off the overlying land, and use it to augment
10 water supplies in any Nebraska wetland or natural stream for
11 the purpose of benefiting fish or wildlife or producing other
12 environmental or recreational benefits may do so only if the
13 natural resources district in which the water well is or would
14 be located allows withdrawals and transport for such purposes and
15 only after applying for and obtaining a permit from such natural
16 resources district. An application for any such permit shall be
17 accompanied by a nonrefundable fee of fifty dollars payable to such
18 district. Such permit shall be in addition to any permit required
19 pursuant to section 46-252 or 46-735 or subdivision (1)(k) of
20 section 46-739.

21 (2) Prior to taking action on an application pursuant to
22 this section, the district shall provide an opportunity for public
23 comment on such application at a regular or special board meeting
24 for which advance published notice of the meeting and the agenda
25 therefor have been given consistent with the Open Meetings Act.

26 (3) In determining whether to grant a permit under this
27 section, the board of directors for the natural resources district

1 shall consider:

2 (a) Whether the proposed use is a beneficial use of
3 ground water;

4 (b) The availability to the applicant of alternative
5 sources of surface water or ground water for the proposed
6 withdrawal, transport, and use;

7 (c) Any negative effect of the proposed withdrawal,
8 transport, and use on ground water supplies needed to meet present
9 or reasonable future demands for water in the area of the proposed
10 withdrawal, transport, and use, to comply with any interstate
11 compact or decree, or to fulfill the provisions of any other formal
12 state contract or agreement;

13 (d) Any negative effect of the proposed withdrawal,
14 transport, and use on surface water supplies needed to meet present
15 or reasonable future demands for water within the state, to comply
16 with any interstate compact or decree, or to fulfill the provisions
17 of any other formal state contract or agreement;

18 (e) Any adverse environmental effect of the proposed
19 withdrawal, transport, and use of the ground water;

20 (f) The cumulative effects of the proposed withdrawal,
21 transport, and use relative to the matters listed in subdivisions
22 (3)(c) through (e) of this section when considered in conjunction
23 with all other withdrawals, transports, and uses subject to this
24 section;

25 (g) Whether the proposed withdrawal, transport, and use
26 is consistent with the district's ground water quantity and
27 quality management plan and with any integrated management plan

1 previously adopted or being considered for adoption in accordance
2 with sections 46-713 to 46-719; and

3 (h) Any other factors consistent with the purposes of
4 this section which the board of directors deems relevant to protect
5 the interests of the state and its citizens.

6 (4) Issuance of a permit shall be conditioned on the
7 applicant's compliance with the rules and regulations of the
8 natural resources district from which the water is to be withdrawn
9 and, if the location where the water is to be used to produce
10 the intended benefits is in a different natural resources district,
11 with the rules and regulations of that natural resources district.
12 The board of directors may include such reasonable conditions on
13 the proposed withdrawal, transport, and use as it deems necessary
14 to carry out the purposes of this section.

15 (5) The applicant shall be required to provide access to
16 his or her property at reasonable times for purposes of inspection
17 by officials of any district where the water is to be withdrawn or
18 to be used.

19 Sec. 19. Section 46-701, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 46-701 Sections 46-701 to 46-753 and section 20 of this
22 act shall be known and may be cited as the Nebraska Ground Water
23 Management and Protection Act.

24 Sec. 20. The Interrelated Water Management Plan Program
25 is created for the purpose of facilitating and funding the duties
26 of districts arising under the Nebraska Ground Water Management
27 and Protection Act. The program shall function as a grant program

1 administered by the Nebraska Natural Resources Commission and
2 the Department of Natural Resources upon recommendations of the
3 commission using funds appropriated for the program. The commission
4 shall develop guidelines and limitations for grant requests for
5 funding such district's duties, including studies required to carry
6 out those duties. Grant requests shall be made to the commission
7 for review in a manner and form prescribed by the commission. The
8 amounts requested and approved shall be supported by a minimum
9 local revenue match comprising twenty percent of the total project
10 cost. The Director of Natural Resources shall expend funds to
11 implement the commission's recommendations for fiscal support under
12 the program only upon the commission's approval.

13 Sec. 21. Section 46-706, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 46-706 For purposes of the Municipal and Rural Domestic
16 Ground Water Transfers Permit Act, the Nebraska Ground Water
17 Management and Protection Act, and sections 46-601 to 46-613.02,
18 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise
19 requires:

20 (1) Person means a natural person, a partnership,
21 a limited liability company, an association, a corporation, a
22 municipality, an irrigation district, an agency or a political
23 subdivision of the state, or a department, an agency, or a bureau
24 of the United States;

25 (2) Ground water means that water which occurs in or
26 moves, seeps, filters, or percolates through ground under the
27 surface of the land;

1 (3) Contamination or contamination of ground water means
2 nitrate nitrogen or other material which enters the ground water
3 due to action of any person and causes degradation of the quality
4 of ground water sufficient to make such ground water unsuitable for
5 present or reasonably foreseeable beneficial uses;

6 (4) District means a natural resources district operating
7 pursuant to Chapter 2, article 32;

8 (5) Illegal water well means (a) any water well operated
9 or constructed without or in violation of a permit required by
10 the Nebraska Ground Water Management and Protection Act, (b) any
11 water well not in compliance with rules and regulations adopted and
12 promulgated pursuant to the act, (c) any water well not properly
13 registered in accordance with sections 46-602 to 46-604, or (d)
14 any water well not in compliance with any other applicable laws of
15 the State of Nebraska or with rules and regulations adopted and
16 promulgated pursuant to such laws;

17 (6) To commence construction of a water well means the
18 beginning of the boring, drilling, jetting, digging, or excavating
19 of the actual water well from which ground water is to be
20 withdrawn;

21 (7) Management area means any area so designated by a
22 district pursuant to section 46-712 or 46-718, by the Director
23 of Environmental Quality pursuant to section 46-725, or by
24 the Interrelated Water Review Board pursuant to section 46-719.
25 Management area includes a control area or a special ground water
26 quality protection area designated prior to July 19, 1996;

27 (8) Management plan means a ground water management plan

1 developed by a district and submitted to the Director of Natural
2 Resources for review pursuant to section 46-711;

3 (9) Ground water reservoir life goal means the finite or
4 infinite period of time which a district establishes as its goal
5 for maintenance of the supply and quality of water in a ground
6 water reservoir at the time a ground water management plan is
7 adopted;

8 (10) Board means the board of directors of a district;

9 (11) Acre-inch means the amount of water necessary to
10 cover an acre of land one inch deep;

11 (12) Subirrigation or subirrigated land means the natural
12 occurrence of a ground water table within the root zone of
13 agricultural vegetation, not exceeding ten feet below the surface
14 of the ground;

15 (13) Best management practices means schedules of
16 activities, maintenance procedures, and other management practices
17 utilized for purposes of irrigation efficiency, to conserve or
18 effect a savings of ground water, or to prevent or reduce present
19 and future contamination of ground water. Best management practices
20 relating to contamination of ground water ~~which~~ may include, but
21 are not limited to, irrigation scheduling, proper rate and timing
22 of fertilizer application, and other fertilizer and pesticide
23 management programs. In determining the rate of fertilizer
24 application, the district shall consult with the University of
25 Nebraska or a certified crop advisor certified by the American
26 Society of Agronomy;

27 (14) Point source means any discernible, confined, and

1 discrete conveyance, including, but not limited to, any pipe,
2 channel, tunnel, conduit, well, discrete fissure, container,
3 rolling stock, vessel, other floating craft, or other conveyance,
4 over which the Department of Environmental Quality has regulatory
5 authority and from which a substance which can cause or contribute
6 to contamination of ground water is or may be discharged;

7 (15) Allocation, as it relates to water use for
8 irrigation purposes, means the allotment of a specified total
9 number of acre-inches of irrigation water per irrigated acre per
10 year or an average number of acre-inches of irrigation water per
11 irrigated acre over any reasonable period of time;

12 (16) Rotation means a recurring series of use and nonuse
13 of irrigation wells on an hourly, daily, weekly, monthly, or yearly
14 basis;

15 (17) Water well has the same meaning as in section
16 46-601.01;

17 (18) Surface water project sponsor means an irrigation
18 district created pursuant to Chapter 46, article 1, a reclamation
19 district created pursuant to Chapter 46, article 5, or a public
20 power and irrigation district created pursuant to Chapter 70,
21 article 6;

22 (19) Beneficial use means that use by which water may be
23 put to use to the benefit of humans or other species;

24 (20) Consumptive use means the amount of water that is
25 consumed under appropriate and reasonably efficient practices to
26 accomplish without waste the purposes for which the appropriation
27 or other legally permitted use is lawfully made;

1 (21) Dewatering well means a well constructed and used
2 solely for the purpose of lowering the ground water table
3 elevation;

4 (22) Emergency situation means any set of circumstances
5 that requires the use of water from any source that might
6 otherwise be regulated or prohibited and the agency, district,
7 or organization responsible for regulating water use from such
8 source reasonably and in good faith believes that such use is
9 necessary to protect the public health, safety, and welfare,
10 including, if applicable, compliance with federal or state water
11 quality standards;

12 (23) Good cause shown means a reasonable justification
13 for granting a variance for a consumptive use of water that
14 would otherwise be prohibited by rule or regulation and which the
15 granting agency, district, or organization reasonably and in good
16 faith believes will provide an economic, environmental, social, or
17 public health and safety benefit that is equal to or greater than
18 the benefit resulting from the rule or regulation from which a
19 variance is sought;

20 (24) Historic consumptive use means the amount of water
21 that has previously been consumed under appropriate and reasonably
22 efficient practices to accomplish without waste the purposes for
23 which the appropriation or other legally permitted use was lawfully
24 made;

25 (25) Monitoring well means a water well that is designed
26 and constructed to provide ongoing hydrologic or water quality
27 information and is not intended for consumptive use;

1 (26) Order, except as otherwise specifically provided,
2 includes any order required by the Nebraska Ground Water Management
3 and Protection Act, by rule or regulation, or by a decision adopted
4 by a district by vote of the board of directors of the district
5 taken at any regularly scheduled or specially scheduled meeting of
6 the board;

7 (27) Overall difference between the current and fully
8 appropriated levels of development means the extent to which
9 existing uses of hydrologically connected surface water and ground
10 water and conservation activities result in the water supply
11 available for purposes identified in subsection (3) of section
12 46-713 to be less than the water supply available if the
13 river basin, subbasin, or reach had been determined to be fully
14 appropriated in accordance with section 46-714;

15 (28) Test hole means a hole designed solely for the
16 purposes of obtaining information on hydrologic or geologic
17 conditions; and

18 (29) Variance means (a) an approval to deviate from a
19 restriction imposed under subdivision (1), (2), (9), or (10) of
20 section 46-714 or (b) the approval to act in a manner contrary to
21 existing rules or regulations from a governing body whose rule or
22 regulation is otherwise applicable.

23 Sec. 22. Section 46-712, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 46-712 (1) A natural resources district may establish
26 a ground water management area in accordance with this section
27 to accomplish any one or more of the following objectives: (a)

1 Protection of ground water quantity; (b) protection of ground water
2 quality; or (c) prevention or resolution of conflicts between users
3 of ground water and appropriators of surface water, which ground
4 water and surface water are hydrologically connected.

5 (2) Prior to establishment by a district of a management
6 area other than a management area being established in accordance
7 with section 46-718, the district's management plan shall have been
8 approved by the Director of Natural Resources or the district
9 shall have completed the requirements of subsection (2) of
10 section 46-711. If necessary to determine whether a management
11 area should be designated, the district may initiate new studies
12 and data-collection efforts and develop computer models. In order
13 to establish a management area, the district shall fix a time
14 and place for a public hearing to consider the management plan
15 information supplied by the director and to hear any other
16 evidence. The hearing shall be located within or in reasonable
17 proximity to the area proposed for designation as a management
18 area. Notice of the hearing shall be published as provided in
19 section 46-743, and the hearing shall be conducted in accordance
20 with such section.

21 (3) (a) Within ninety days after the hearing, the district
22 shall determine whether a management area shall be designated.
23 If the district determines that no management area shall be
24 established, the district shall issue an order to that effect.

25 (b) If the district determines that a management area
26 shall be established, the district shall by order designate
27 the area as a management area and shall adopt one or more

1 controls authorized by section 46-739 to be utilized within the
2 area in order to achieve the ground water management objectives
3 specified in the plan. Such an order shall include a geographic and
4 stratigraphic definition of the area. The boundaries and controls
5 shall take into account any considerations brought forth at the
6 hearing and administrative factors directly affecting the ability
7 of the district to implement and carry out local ground water
8 management.

9 (c) The controls adopted shall not include controls
10 substantially different from those set forth in the notice of the
11 hearing. The area designated by the order shall not include any
12 area not included in the notice of the hearing.

13 (4) Modification of the boundaries of a
14 district-designated management area or dissolution of such an area
15 shall be in accordance with the procedures established in this
16 section. Hearings for such modifications or for dissolution may not
17 be initiated more often than once a year. Hearings for modification
18 of controls may be initiated as often as deemed necessary by the
19 district, and such modifications may be accomplished using the
20 procedure in this section.

21 (5) A district shall, prior to adopting or amending
22 any rules or regulations for a management area, consult with any
23 holders of permits for intentional or incidental underground water
24 storage and recovery issued pursuant to section 46-226.02, 46-233,
25 46-240, 46-241, 46-242, or 46-297.

26 (6) If a groundwater management area has been adopted by
27 a district under this section that includes one or more controls

1 authorized by subdivision (1)(f) or (1)(m) of section 46-739, the
2 district may request the department to conduct an evaluation to
3 determine if an immediate stay should be placed on the issuance
4 of new surface water natural flow appropriations in the area,
5 river basin, subbasin, or reach of the management area, and the
6 department may determine that the stay is in the public interest.
7 The stay may include provisions for exceptions to be granted for
8 beneficial uses as described in subsection (3) of section 46-714
9 or for a project that provides hydrological benefit to the area of
10 the stay and may include provisions that the stay may be rescinded
11 based on new or additional information that may become available.

12 Sec. 23. Section 46-713, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 46-713 (1)(a) By January 1 of each year beginning in
15 2006 and except as otherwise provided in this section and section
16 46-720, the Department of Natural Resources shall complete an
17 evaluation of the expected long-term availability of hydrologically
18 connected water supplies for both existing and new surface water
19 uses and existing and new ground water uses in each of the
20 state's river basins and shall issue a report that describes the
21 results of the evaluation. For purposes of the evaluation and the
22 report, a river basin may be divided into two or more subbasins or
23 reaches. A river basin, subbasin, or reach for which an integrated
24 management plan has been or is being developed pursuant to sections
25 46-715 to 46-717 or pursuant to section 46-719 shall not be
26 evaluated unless it is being reevaluated as provided in subsection
27 (2) of this section. For each river basin, subbasin, or reach

1 evaluated, the report shall describe (i) the nature and extent
2 of use of both surface water and ground water in each river
3 basin, subbasin, or reach, (ii) the geographic area within which
4 the department preliminarily considers surface water and ground
5 water to be hydrologically connected and the criteria used for
6 that determination, and (iii) the extent to which the then-current
7 uses affect available near-term and long-term water supplies.
8 River basins, subbasins, and reaches designated as overappropriated
9 in accordance with subsection (4) of this section shall not be
10 evaluated by the department.

11 (b) Based on the information reviewed in the evaluation
12 process, the department shall arrive at a preliminary conclusion
13 for each river basin, subbasin, and reach evaluated as to
14 whether such river basin, subbasin, or reach presently is fully
15 appropriated without the initiation of additional uses. The
16 department shall also determine if and how such preliminary
17 conclusion would change if no additional legal constraints were
18 imposed on future development of hydrologically connected surface
19 water and ground water and reasonable projections are made about
20 the extent and location of future development in such river basin,
21 subbasin, or reach.

22 (c) In addition to the conclusion about whether a river
23 basin, subbasin, or reach is fully appropriated, the department
24 shall include in the report, for informational purposes only,
25 a summary of relevant data provided by any interested party
26 concerning the social, economic, and environmental impacts of
27 additional hydrologically connected surface water and ground water

1 uses on resources that are dependent on streamflow or ground water
2 levels but are not protected by appropriations or regulations.

3 (d) In preparing the report, the department shall rely
4 on the best scientific data, and information, and methodologies
5 readily available to ensure that the conclusions and results
6 contained in the report are reliable. In its report, the department
7 shall provide sufficient documentation to allow these data,
8 information, methodologies, and conclusions to be independently
9 replicated and assessed. Upon request by the department, state
10 agencies, natural resources districts, irrigation districts,
11 reclamation districts, public power and irrigation districts,
12 mutual irrigation companies, canal companies, municipalities, and
13 other water users and stakeholders shall provide relevant data
14 and information in their possession. The Department of Natural
15 Resources shall specify by rule and regulation the types of
16 scientific data and other information that will be considered for
17 making the preliminary determinations required by this section.

18 (2) The department shall complete a reevaluation of
19 a river basin, subbasin, or reach for which an integrated
20 management plan has been or is being prepared if the department has
21 reason to believe that a reevaluation might lead to a different
22 determination about whether such river basin, subbasin, or reach
23 is fully appropriated or overappropriated. A decision to reevaluate
24 may be reached by the department on its own or in response
25 to a petition filed with the department by any interested
26 person. To be considered sufficient to justify a reevaluation,
27 a petition shall be accompanied by supporting information showing

1 that (a) new scientific data or other information relevant to the
2 determination of whether the river basin, subbasin, or reach is
3 fully appropriated or overappropriated has become available since
4 the last evaluation of such river basin, subbasin, or reach, (b)
5 the department relied on incorrect or incomplete information when
6 the river basin, subbasin, or reach was last evaluated, or (c)
7 the department erred in its interpretation or application of the
8 information available when the river basin, subbasin, or reach was
9 last evaluated. If a petition determined by the department to be
10 sufficient is filed before March 1 of any year, the reevaluation of
11 the river basin, subbasin, or reach involved shall be included in
12 the next annual report prepared in accordance with subsection (1)
13 of this section. If any such petition is filed on or after March 1
14 of any year, the department may defer the reevaluation of the river
15 basin, subbasin, or reach involved until the second annual report
16 after such filing.

17 (3) A river basin, subbasin, or reach shall be deemed
18 fully appropriated if the department determines based upon its
19 evaluation conducted pursuant to subsection (1) of this section
20 and information presented at the hearing pursuant to subsection
21 (4) of section 46-714 that then-current uses of hydrologically
22 connected surface water and ground water in the river basin,
23 subbasin, or reach cause or will in the reasonably foreseeable
24 future cause (a) the surface water supply to be insufficient to
25 sustain over the long term the beneficial or useful purposes for
26 which existing natural flow or storage appropriations were granted
27 and the beneficial or useful purposes for which, at the time of

1 approval, any existing instream appropriation was granted, (b) the
2 streamflow to be insufficient to sustain over the long term the
3 beneficial uses from wells constructed in aquifers dependent on
4 recharge from the river or stream involved, or (c) reduction in
5 the flow of a river or stream sufficient to cause noncompliance by
6 Nebraska with an interstate compact or decree, other formal state
7 contract or agreement, or applicable state or federal laws.

8 (4) (a) A river basin, subbasin, or reach shall be deemed
9 overappropriated if, on July 16, 2004, the river basin, subbasin,
10 or reach is subject to an interstate cooperative agreement among
11 three or more states and if, prior to such date, the department
12 has declared a moratorium on the issuance of new surface water
13 appropriations in such river basin, subbasin, or reach and has
14 requested each natural resources district with jurisdiction in the
15 affected area in such river basin, subbasin, or reach either (i)
16 to close or to continue in effect a previously adopted closure of
17 all or part of such river basin, subbasin, or reach to the issuance
18 of additional water well permits in accordance with subdivision
19 (1) (k) of section 46-656.25 as such section existed prior to July
20 16, 2004, or (ii) to temporarily suspend or to continue in effect
21 a temporary suspension, previously adopted pursuant to section
22 46-656.28 as such section existed prior to July 16, 2004, on the
23 drilling of new water wells in all or part of such river basin,
24 subbasin, or reach.

25 (b) Within sixty days after July 16, 2004, the department
26 shall designate which river basins, subbasins, or reaches are
27 overappropriated. The designation shall include a description of

1 the geographic area within which the department has determined that
2 surface water and ground water are hydrologically connected and the
3 criteria used to make such determination.

4 Sec. 24. Section 46-714, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 46-714 (1) Whenever the Department of Natural Resources
7 makes a preliminary determination that a river basin, subbasin,
8 or reach not previously designated as overappropriated and not
9 previously determined to be fully appropriated has become fully
10 appropriated, the department shall place an immediate stay on
11 the issuance of any new natural-flow, storage, or storage-use
12 appropriations in such river basin, subbasin, or reach. The
13 department shall also provide prompt notice of such preliminary
14 determination to all licensed water well contractors in the state
15 and to each natural resources district that encompasses any of
16 the geographic area involved. Such notice to natural resources
17 districts shall be by certified mail. The notice shall be addressed
18 to the manager of the natural resources district or his or her
19 designee and shall include the signature of the director of the
20 department. Immediately upon receipt of such notice by the natural
21 resources district, there shall be a stay on issuance of water
22 well construction permits in the geographic area preliminarily
23 determined by the department to include hydrologically connected
24 surface water and ground water in such river basin, subbasin,
25 or reach. The department shall also notify the public of the
26 preliminary determination that the river basin, subbasin, or reach
27 is fully appropriated and of the affected geographic area. Such

1 notice shall be provided by publication once each week for
2 three consecutive weeks in at least one newspaper of statewide
3 circulation and in such other newspaper or newspapers as are deemed
4 appropriate by the department to provide general circulation in the
5 river basin, subbasin, or reach.

6 (2) If the department preliminarily determines a river
7 basin, subbasin, or reach to be fully appropriated and has
8 identified the existence of hydrologically connected surface water
9 and ground water in such river basin, subbasin, or reach, stays
10 shall also be imposed:

11 (a) ~~on~~ On the construction of any new water well in the
12 area covered by the determination ~~if such construction has not~~
13 ~~commenced~~ unless a permit with conditions imposed by the natural
14 resources district has been issued prior to the determination.
15 Such conditions shall meet the objectives of subsection (3)
16 of section 46-715 and may include, but are not limited to,
17 conditions in accordance with subsection (6) of section 46-739.
18 Any well constructed pursuant to such permit shall be completed in
19 accordance with section 46-738; ~~whether or not a construction~~
20 permit for such water well was previously obtained from the
21 department or a natural resources district, and

22 (b) ~~on~~ On the use of an existing water well or an
23 existing surface water appropriation in the affected area to
24 increase the number of acres historically irrigated.

25 Such additional stays shall begin ten days after the
26 first publication, in a newspaper of statewide circulation, of
27 the notice of the preliminary determination that the river basin,

1 subbasin, or reach is fully appropriated.

2 (3) Exceptions to the stays imposed pursuant to
3 subsection (1), (2), (9), or (10) of this section shall exist
4 for (a) test holes, (b) dewatering wells with an intended use
5 of one year or less, (c) monitoring wells, (d) wells constructed
6 pursuant to a ground water remediation plan under the Environmental
7 Protection Act, (e) water wells designed and constructed to pump
8 fifty gallons per minute or less, except that no two or more
9 water wells that each pump fifty gallons per minute or less may
10 be connected or otherwise combined to serve a single project such
11 that the collective pumping would exceed fifty gallons per minute,
12 (f) water wells for range livestock, (g) new surface water uses or
13 water wells that are necessary to alleviate an emergency situation
14 involving the provision of water for human consumption or public
15 health and safety, (h) water wells defined by the applicable
16 natural resources district as replacement water wells, but the
17 consumptive use of any such replacement water well can be no
18 greater than the historic consumptive use of the water well it
19 is to replace or, if applicable, the historic consumptive use of
20 the surface water use it is to replace, (i) new surface water
21 uses and water wells to which a right or permit is transferred
22 in accordance with state law, but the consumptive use of any
23 such new use can be no greater than the historic consumptive use
24 of the surface water use or water well from which the right or
25 permit is being transferred, (j) water wells and increases in
26 ground water irrigated acres for which a variance is granted by
27 the applicable natural resources district for good cause shown,

1 (k) ~~to the extent permitted~~ subject to any conditions imposed by
2 the applicable natural resources district, to the extent permitted
3 by the applicable natural resources district, increases in ground
4 water irrigated acres that result from the use of water wells that
5 were constructed within the nine months prior to the effective
6 date of the stay permitted prior to the effective date of the
7 determination made in subsection (1) of this section and completed
8 in accordance with section 46-738 but were not used for irrigation
9 prior to that effective date, (l) to the extent permitted by the
10 applicable natural resources district, increases in ground water
11 irrigated acres that result from the use of water wells that are
12 constructed after the effective date of the stay in accordance
13 with a permit granted by that natural resources district prior
14 to the effective date of the stay, (m) surface water uses for
15 which temporary public-use construction permits are issued pursuant
16 to subsection (8) of section 46-233, (n) surface water uses and
17 increases in surface water irrigated acres for which a variance is
18 granted by the department for good cause shown, and (o) water wells
19 for which permits have been approved by the Department of Natural
20 Resources pursuant to the Municipal and Rural Domestic Ground Water
21 Transfers Permit Act prior to the effective date of the stay.

22 (4) Except as otherwise provided in this section, any
23 stay imposed pursuant to subsections (1) and (2) of this section
24 shall remain in effect for the affected river basin, subbasin, or
25 reach until the department has made a final determination regarding
26 whether the river basin, subbasin, or reach is fully appropriated
27 and, if the department's final determination is that the river

1 basin, subbasin, or reach is fully appropriated, shall remain in
2 effect as provided in subsection (12) of this section. Within
3 the time period between the dates of the preliminary and final
4 determinations, the department and the affected natural resources
5 districts shall consult with any irrigation district, reclamation
6 district, public power and irrigation district, mutual irrigation
7 company, canal company, or municipality that relies on water from
8 the affected river basin, subbasin, or reach and with other water
9 users and stakeholders as deemed appropriate by the department
10 or the natural resources districts. The department shall also
11 hold one or more public hearings not more than ninety days after
12 the first publication of the notice required by subsection (1)
13 of this section. Notice of the hearings shall be provided in
14 the same manner as the notice required by such subsection. Any
15 interested person may appear at such hearing and present written or
16 oral testimony and evidence concerning the appropriation status of
17 the river basin, subbasin, or reach, the department's preliminary
18 conclusions about the extent of the area within which the surface
19 water and ground water supplies for the river basin, subbasin, or
20 reach are determined to be hydrologically connected, and whether
21 the stays on new uses should be terminated.

22 (5) Within thirty days after the final hearing under
23 subsection (4) of this section, the department shall notify the
24 appropriate natural resources districts of the department's final
25 determination with respect to the appropriation status of the
26 river basin, subbasin, or reach. If the final determination is
27 that the river basin, subbasin, or reach is fully appropriated,

1 the department, at the same time, shall (a) decide whether to
2 continue or to terminate the stays on new surface water uses and
3 on increases in the number of surface water irrigated acres and (b)
4 designate the geographic area within which the department considers
5 surface water and ground water to be hydrologically connected in
6 the river basin, subbasin, or reach and describe the methods and
7 criteria used in making that determination. The department shall
8 provide notice of its decision to continue or terminate the stays
9 in the same manner as the notice required by subsection (1) of this
10 section.

11 (6) If the department's final determination is that
12 the river basin, subbasin, or reach is not fully appropriated,
13 the department shall provide notice of such determination as
14 provided in subsection (1) of this section, the stays imposed
15 pursuant to subsections (1) and (2) of this section shall terminate
16 immediately, and no further action pursuant to subsections (7)
17 through (12) of this section and sections 46-715 to 46-719 shall be
18 required.

19 (7) Within ninety days after a final determination by
20 the department that a river basin, subbasin, or reach is fully
21 appropriated, an affected natural resources district may hold one
22 or more public hearings on the question of whether the stays on
23 the issuance of new water well permits, on the construction of
24 new water wells, or on increases in ground water irrigated acres
25 should be terminated. Notice of the hearings shall be published as
26 provided in section 46-743.

27 (8) Within forty-five days after a natural resources

1 district's final hearing pursuant to subsection (7) of this
2 section, the natural resources district shall decide (a) whether
3 to terminate the stay on new water wells in all or part of the
4 natural resources district subject to the stay and (b) whether to
5 terminate the stay on increases in ground water irrigated acres. If
6 the natural resources district decides not to terminate the stay
7 on new water wells in any geographic area, it shall also decide
8 whether to exempt from such stay the construction of water wells
9 for which permits were issued prior to the issuance of the stay but
10 for which construction had not begun prior to issuance of the stay.
11 If construction of water wells for which permits were issued prior
12 to the stay is allowed, all permits that were valid when the stay
13 went into effect shall be extended by a time period equal to the
14 length of the stay.

15 (9) Whenever the department designates a river basin,
16 subbasin, or reach as overappropriated, each previously declared
17 moratorium on the issuance of new surface water appropriations in
18 the river basin, subbasin, or reach shall continue in effect. The
19 department shall also provide prompt notice of such designation
20 to all licensed water well contractors in the state and to each
21 natural resources district that encompasses any of the geographic
22 area involved. Immediately upon receipt of such notice by a natural
23 resources district, there shall be a stay on the issuance of new
24 water well construction permits in any portion of such natural
25 resources district that is within the hydrologically connected area
26 designated by the department. The department shall also notify the
27 public of its designation of such river basin, subbasin, or reach

1 as overappropriated and of the geographic area involved in such
2 designation. Such notice shall be published once each week for
3 three consecutive weeks in at least one newspaper of statewide
4 circulation and in such other newspapers as are deemed appropriate
5 by the department to provide general notice in the river basin,
6 subbasin, or reach.

7 (10) Beginning ten days after the first publication
8 of notice under subsection (9) of this section in a newspaper
9 of statewide circulation, there shall also be stays (a) on the
10 construction of any new water well in the hydrologically connected
11 area if such construction has not commenced prior to such date
12 and if no permit for construction of the water well has been
13 issued previously by either the department or the natural resources
14 district, (b) on the use of an existing water well in the
15 hydrologically connected area to increase the number of acres
16 historically irrigated, and (c) on the use of an existing surface
17 water appropriation to increase the number of acres historically
18 irrigated in the affected area.

19 (11) Within ninety days after a designation by
20 the department of a river basin, subbasin, or reach as
21 overappropriated, a natural resources district that encompasses any
22 of the hydrologically connected area designated by the department
23 may hold one or more public hearings on the question of whether
24 to terminate the stays on (a) the construction of new water wells
25 within all or part of its portion of the hydrologically connected
26 area, (b) the issuance of new water well construction permits in
27 such area, or (c) the increase in ground water irrigated acres in

1 such area. Notice of any hearing for such purpose shall be provided
2 pursuant to section 46-743. Prior to the scheduling of a natural
3 resources district hearing on the question of whether to terminate
4 any such stay, the department and the affected natural resources
5 district shall consult with any irrigation district, reclamation
6 district, public power and irrigation district, mutual irrigation
7 company, canal company, or municipality that relies on water from
8 the affected river basin, subbasin, or reach and with other water
9 users and stakeholders as deemed appropriate by the department or
10 the natural resources district.

11 (12) Any stay issued pursuant to this section shall
12 remain in effect until (a) the stay has been terminated pursuant
13 to subsection (5), (6), (8), or (11) of this section, (b) an
14 integrated management plan for the affected river basin, subbasin,
15 or reach has been adopted by the department and the affected
16 natural resources districts and has taken effect, (c) an integrated
17 management plan for the affected river basin, subbasin, or reach
18 has been adopted by the Interrelated Water Review Board and has
19 taken effect, (d) the department has completed a reevaluation
20 pursuant to subsection (2) of section 46-713 and has determined
21 that the affected river basin, subbasin, or reach is not fully
22 appropriated or overappropriated, or (e) the stay expires pursuant
23 to this subsection. Such stay may be imposed initially for not
24 more than three years following the department's designation of
25 the river basin, subbasin, or reach as overappropriated or the
26 department's final determination that a river basin, subbasin, or
27 reach is fully appropriated and may be extended thereafter on

1 an annual basis by agreement of the department and the affected
2 natural resources district for not more than two additional years
3 if necessary to allow the development, adoption, and implementation
4 of an integrated management plan pursuant to sections 46-715 to
5 46-719.

6 Sec. 25. Section 46-715, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 46-715 (1) Whenever the Department of Natural
9 Resources has designated a river basin, subbasin, or reach as
10 overappropriated or has made a final determination that a river
11 basin, subbasin, or reach is fully appropriated, the natural
12 resources districts encompassing such river basin, subbasin, or
13 reach and the department shall jointly develop an integrated
14 management plan for such river basin, subbasin, or reach. The plan
15 shall be completed, adopted, and take effect within three years
16 after such designation or final determination unless the department
17 and the natural resources districts jointly agree to an extension
18 of not more than two additional years.

19 (2) In developing an integrated management plan, the
20 effects of existing and potential new water uses on existing
21 surface water appropriators and ground water users shall be
22 considered. An integrated management plan shall include the
23 following: (a) Clear goals and objectives with a purpose of
24 sustaining a balance between water uses and water supplies so that
25 the economic viability, social and environmental health, safety,
26 and welfare of the river basin, subbasin, or reach can be achieved
27 and maintained for both the near term and the long term; (b)

1 a map clearly delineating the geographic area subject to the
2 integrated management plan; (c) one or more of the ground water
3 controls authorized for adoption by natural resources districts
4 pursuant to section 46-739; ~~and~~ (d) one or more of the surface
5 water controls authorized for adoption by the department pursuant
6 to section 46-716; and (e) a plan to gather and evaluate data,
7 information, and methodologies that could be used to implement
8 sections 46-715 to 46-717, increase understanding of the surface
9 water and hydrologically connected ground water system, and test
10 the validity of the conclusions and information upon which the
11 integrated management plan is based. The plan may also provide for
12 utilization of any applicable incentive programs authorized by law.
13 Nothing in the integrated management plan for a fully appropriated
14 river basin, subbasin, or reach shall require a natural resources
15 district to regulate ground water uses in place at the time of
16 the department's preliminary determination that the river basin,
17 subbasin, or reach is fully appropriated, but a natural resources
18 district may voluntarily adopt such regulations. The applicable
19 natural resources district may decide to include all water users
20 within the district boundary in an integrated management plan.

21 (3) The ground water and surface water controls proposed
22 for adoption in the integrated management plan pursuant to
23 subsection (1) of this section shall, when considered together
24 and with any applicable incentive programs, (a) be consistent with
25 the goals and objectives of the plan, (b) be sufficient to ensure
26 that the state will remain in compliance with applicable state and
27 federal laws and with any applicable interstate water compact or

1 decree or other formal state contract or agreement pertaining to
2 surface water or ground water use or supplies, and (c) protect the
3 ground water users whose water wells are dependent on recharge from
4 the river or stream involved and the surface water appropriators on
5 such river or stream from streamflow depletion caused by surface
6 water uses and ground water uses begun after the date the river
7 basin, subbasin, or reach was designated as overappropriated or
8 was preliminarily determined to be fully appropriated in accordance
9 with section 46-713.

10 (4) (a) In any river basin, subbasin, or reach that is
11 designated as overappropriated, when the designated area lies
12 within two or more natural resources districts, the department and
13 the affected natural resources districts shall jointly develop a
14 basin-wide plan for the area designated as overappropriated. Such
15 plan shall be developed using the consultation and collaboration
16 process described in subdivision (b) of this subsection, shall
17 be developed concurrently with the development of the integrated
18 management plan required pursuant to subsections (1) through (3) of
19 this section, and shall be designed to achieve, in the incremental
20 manner described in subdivision (d) of this subsection, the goals
21 and objectives described in subsection (2) of this section. The
22 basin-wide plan shall be adopted after hearings by the department
23 and the affected natural resources districts.

24 (b) In any river basin, subbasin, or reach designated
25 as overappropriated and subject to this subsection, the department
26 and each natural resources district encompassing such river basin,
27 subbasin, or reach shall jointly develop an integrated management

1 plan for such river basin, subbasin, or reach pursuant to
2 subsections (1) through (3) of this section. Each integrated
3 management plan for a river basin, subbasin, or reach subject
4 to this subsection shall be consistent with any basin-wide plan
5 developed pursuant to subdivision (a) of this subsection. Such
6 integrated management plan shall be developed after consultation
7 and collaboration with irrigation districts, reclamation districts,
8 public power and irrigation districts, mutual irrigation companies,
9 canal companies, and municipalities that rely on water from
10 within the affected area and that, after being notified of the
11 commencement of the plan development process, indicate in writing
12 their desire to participate in such process. In addition, the
13 department or the affected natural resources districts may include
14 designated representatives of other stakeholders. If agreement
15 is reached by all parties involved in such consultation and
16 collaboration process, the department and each natural resources
17 district shall adopt the agreed-upon integrated management plan. If
18 agreement cannot be reached by all parties involved, the integrated
19 management plan shall be developed and adopted by the department
20 and the affected natural resources district pursuant to sections
21 46-715 to 46-718 or by the Interrelated Water Review Board pursuant
22 to section 46-719.

23 (c) Any integrated management plan developed under
24 this subsection shall identify the overall difference between
25 the current and fully appropriated levels of development. Such
26 determination shall take into account cyclical supply, including
27 drought, identify the portion of the overall difference between the

1 current and fully appropriated levels of development that is due
2 to conservation measures, and identify the portions of the overall
3 difference between the current and fully appropriated levels of
4 development that are due to water use initiated prior to July 1,
5 1997, and to water use initiated on or after such date.

6 (d) Any integrated management plan developed under this
7 subsection shall adopt an incremental approach to achieve the goals
8 and objectives identified under subdivision (2)(a) of this section
9 using the following steps:

10 (i) The first incremental goals shall be to address the
11 impact of streamflow depletions to (A) surface water appropriations
12 and (B) water wells constructed in aquifers dependent upon recharge
13 from streamflow, to the extent those depletions are due to water
14 use initiated after July 1, 1997, and, unless an interstate
15 cooperative agreement for such river basin, subbasin, or reach is
16 no longer in effect, to prevent streamflow depletions that would
17 cause noncompliance by Nebraska with such interstate cooperative
18 agreement. During the first increment, the department and the
19 affected natural resources districts shall also pursue voluntary
20 efforts, subject to the availability of funds, to offset any
21 increase in streamflow depletive effects that occur after July 1,
22 1997, but are caused by ground water uses initiated prior to such
23 date. The department and the affected natural resources districts
24 may also use other appropriate and authorized measures for such
25 purpose;

26 (ii) The department and the affected natural resources
27 districts may amend an integrated management plan subject to this

1 subsection (4) as necessary based on an annual review of the
2 progress being made toward achieving the goals for that increment;

3 (iii) During the ten years following adoption of an
4 integrated management plan developed under this subsection (4)
5 or during the ten years after the adoption of any subsequent
6 increment of the integrated management plan pursuant to subdivision
7 (d)(iv) of this subsection, the department and the affected natural
8 resources district shall conduct a technical analysis of the
9 actions taken in such increment to determine the progress towards
10 meeting the goals and objectives adopted pursuant to subsection (2)
11 of this section. The analysis shall include an examination of (A)
12 available supplies and changes in long-term availability, (B) the
13 effects of conservation practices and natural causes, including,
14 but not limited to, drought, and (C) the effects of the plan
15 on reducing the overall difference between the current and fully
16 appropriated levels of development identified in subdivision (4)(c)
17 of this section. The analysis shall determine whether a subsequent
18 increment is necessary in the integrated management plan to meet
19 the goals and objectives adopted pursuant to subsection (2) of this
20 section and reduce the overall difference between the current and
21 fully appropriated levels of development identified in subdivision
22 (4)(c) of this section;

23 (iv) Based on the determination made in subdivision
24 (d)(iii) of this subsection, the department and the affected
25 natural resources districts, utilizing the consultative and
26 collaborative process described in subdivision (b) of this
27 subsection, shall if necessary identify goals for a subsequent

1 increment of the integrated management plan. Subsequent increments
2 shall be completed, adopted, and take effect not more than ten
3 years after adoption of the previous increment; and

4 (v) If necessary, the steps described in subdivisions
5 (d)(ii) through (iv) of this subsection shall be repeated until
6 the department and the affected natural resources districts agree
7 that the goals and objectives identified pursuant to subsection
8 (2) of this section have been met and the overall difference
9 between the current and fully appropriated levels of development
10 identified in subdivision (4)(c) of this section has been addressed
11 so that the river basin, subbasin, or reach has returned to a fully
12 appropriated condition.

13 Sec. 26. Section 46-719, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 46-719 (1)(a) The Interrelated Water Review Board is
16 created for the purposes stated in subsections (2) through (5)
17 of this section. The board shall consist of five members. The
18 board, when appointed and convened, shall continue in existence
19 only until it has resolved a dispute referred to it pursuant to
20 such subsections. The Governor shall appoint and convene the board
21 within forty-five days of being notified of the need to resolve
22 a dispute. The board shall be chaired by the Governor or his
23 or her designee, which designee shall be knowledgeable concerning
24 surface water and ground water issues. The Governor shall appoint
25 one additional member of his or her choosing and shall appoint
26 the other three members of the board from a list of no fewer than
27 six nominees provided by the Nebraska Natural Resources Commission

1 within twenty days after request by the Governor for a list of
2 nominees.

3 (b) Not more than two members of the board shall reside
4 in the geographic area involved in the dispute. A person is not
5 eligible for membership on the board if the decisions to be made
6 by the board would or could cause financial benefit or detriment
7 to the person, a member of his or her immediate family, or a
8 business with which the person is associated, unless such benefit
9 or detriment is indistinguishable from the effects of such action
10 on the public generally or a broad segment of the public. The board
11 shall be subject to the Open Meetings Act.

12 (c) For purposes of subsections (2) and (3) of this
13 section, action may be taken by a vote of three of the board's five
14 members. For purposes of subsections (4) and (5) of this section,
15 action may be taken only by a vote of at least four of the board's
16 five members.

17 (2)(a) If the Department of Natural Resources and the
18 affected natural resources districts cannot resolve disputes over
19 the content of a basin-wide plan or an integrated management plan
20 by utilizing the process described in sections 46-715 to 46-718,
21 the Governor shall be notified and the dispute submitted to the
22 Interrelated Water Review Board. When the board has been appointed
23 and convened to resolve disputes over a basin-wide plan, the
24 department and each affected district shall present their proposed
25 basin-wide plans to the board. When the board has been convened to
26 resolve disputes over an integrated management plan, the department
27 and each affected natural resources district shall present their

1 (i) proposed goals and objectives for the integrated management
2 plan, (ii) proposed geographic area to be subject to controls,
3 and (iii) proposed surface water and ground water controls and any
4 proposed incentive program for adoption and implementation in the
5 river basin, subbasin, or reach involved. The department and each
6 affected natural resources district shall also be given adequate
7 opportunity to comment on the proposals made by the other parties
8 to the dispute.

9 (b) When the Interrelated Water Review Board concludes
10 that the issues in dispute have been fully presented and commented
11 upon by the parties to the dispute, which conclusion shall be made
12 not more than forty-five days after the board is convened, the
13 board shall select the proposals or portions of proposals that the
14 board will consider for adoption and shall schedule one or more
15 public hearings to take testimony on the selected proposals. The
16 hearings shall be held within forty-five days after the board's
17 selection of proposals to consider for adoption and shall be within
18 or in reasonable proximity to the area that would be affected by
19 implementation of any of the proposals to be considered at the
20 hearings. Notice of the hearings shall be published as provided in
21 section 46-743. The cost of publishing the notice shall be shared
22 by the department and the affected natural resources districts. All
23 interested persons may appear at the hearings and present testimony
24 or provide other evidence relevant to the issues being considered.

25 (c) Within forty-five days after the final hearing
26 pursuant to subdivision (b) of this subsection, the Interrelated
27 Water Review Board shall by order, as applicable, adopt a

1 basin-wide plan or an integrated management plan for the affected
2 river basin, subbasin, or reach and, in the case of an integrated
3 management plan, shall designate a ground water management ~~plan~~
4 area for integrated management or an integrated management subarea
5 for such river basin, subbasin, or reach. An integrated management
6 plan shall be consistent with subsection (2) of section 46-715,
7 and the surface water and ground water controls and any applicable
8 incentive programs adopted as part of that plan shall be consistent
9 with subsection (3) of section 46-715. The controls adopted by the
10 board shall not be substantially different from those described
11 in the notice of hearing. The area designated as a ground water
12 management area or an integrated management subarea shall not
13 include any area that was not identified in the notice of the
14 hearing as within the area proposed to be subject to the controls
15 in the plan.

16 (d) The order adopted under this subsection shall be
17 published in the manner prescribed in section 46-744.

18 (e) Surface water controls adopted by the Interrelated
19 Water Review Board shall be implemented and enforced by the
20 department. Ground water controls adopted by the Interrelated Water
21 Review Board shall be implemented and enforced by the affected
22 natural resources districts.

23 (3) Whether an integrated management plan is adopted
24 pursuant to section 46-718 or by the Interrelated Water Review
25 Board pursuant to subsection (2) of this section, the department or
26 a natural resources district responsible in part for implementation
27 and enforcement of an integrated management plan may propose

1 modification of the goals or objectives of that plan, of the area
2 subject to the plan, or of the surface water controls, ground
3 water controls, or incentive programs adopted to implement the
4 plan. The department and the affected natural resources districts
5 shall utilize the procedures in sections 46-715 to 46-718 in
6 an attempt to reach agreement on and to adopt and implement
7 proposed modifications. If agreement on such modifications cannot
8 be achieved utilizing those procedures, either the department or
9 an affected natural resources district may notify the Governor of
10 the dispute. The Interrelated Water Review Board shall be appointed
11 and convened in accordance with subsection (1) of this section to
12 resolve the dispute and, if applicable, to adopt any modifications
13 utilizing the procedures in subsection (2) of this section.

14 (4) The department and the affected natural resources
15 districts may also raise objections concerning the implementation
16 or enforcement of previously adopted surface water or ground
17 water controls. The department and the affected natural resources
18 districts shall utilize the procedures in sections 46-715 to
19 46-718 in an attempt to reach agreement on such implementation or
20 enforcement issues. If agreement on such issues cannot be achieved
21 utilizing such procedures, either the department or an affected
22 natural resources district may notify the Governor of the dispute.
23 The Interrelated Water Review Board shall be appointed and convened
24 in accordance with subsection (1) of this section. After permitting
25 each party to fully express its reasons for its position on the
26 disputed issues, the board may either take no action or conclude
27 (a) that one or more parties needs to modify its approach to

1 implementation or enforcement and direct that such modifications
2 take place or (b) that one or more parties either has not made
3 a good faith effort to implement or enforce the portion of the
4 plan or controls for which it is responsible or is unable to
5 fully implement and enforce such portion and that such party's
6 jurisdiction with respect to implementation and enforcement of
7 the plan and controls shall be terminated and reassigned to one
8 or more of the other parties responsible for implementation and
9 enforcement. A decision by the Interrelated Water Review Board to
10 terminate and reassign jurisdiction of any portion of the plan or
11 controls shall take effect immediately upon that decision. Notice
12 of such reassignment shall be published at least once in one or
13 more newspapers as necessary to provide general circulation in the
14 area affected by such reassignment.

15 (5) The board may be reconvened in accordance with
16 subsection (1) of this section at a later date upon request to
17 the Governor by the party for which jurisdiction for implementation
18 and enforcement was terminated if such party desires to have its
19 jurisdiction reinstated, but no such request shall be honored until
20 at least one year after the termination and not more than once
21 per year thereafter. The board may reinstate jurisdiction to that
22 party only upon a clear showing by such party that it is willing
23 and able to fully implement and enforce the plan and any applicable
24 controls. Notice that a party's jurisdiction has been reinstated
25 shall be provided in the same manner that notice of the earlier
26 termination was given.

27 Sec. 27. Section 46-739, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 46-739 (1) A district in which a management area has
3 been designated shall by order adopt one or more of the following
4 controls for the management area:

5 (a) It may allocate the amount of ground water that may
6 be withdrawn by ground water users;

7 (b) It may adopt a system of rotation for use of ground
8 water;

9 (c) It may adopt well-spacing requirements more
10 restrictive than those found in sections 46-609 and 46-651;

11 (d) It may require the installation of devices for
12 measuring ground water withdrawals from water wells;

13 (e) It may adopt a system which requires reduction of
14 irrigated acres pursuant to subsection (2) of section 46-740;

15 (f) It may limit or prevent the expansion of irrigated
16 acres or otherwise limit or prevent increases in the consumptive
17 use of ground water withdrawals from water wells used for
18 irrigation or other beneficial purposes;

19 (g) It may require the use of best management practices;

20 (h) It may require the analysis of water or deep soils
21 for fertilizer and chemical content;

22 (i) It may impose mandatory educational requirements
23 designed to protect water quality or to stabilize or reduce the
24 incidence of ground water depletion, conflicts between ground water
25 users and surface water appropriators, disputes over interstate
26 compacts or decrees, or difficulties fulfilling the provisions of
27 other formal state contracts or agreements;

1 (j) It may require water quality monitoring and reporting
2 of results to the district for all water wells within all or part
3 of the management area;

4 (k) It may require district approval of (i) transfers of
5 ground water off the land where the water is withdrawn or (ii)
6 transfers of rights to use ground water that result from district
7 allocations imposed pursuant to subdivision (1)(a) of this section
8 or from other restrictions on use that are imposed by the district
9 in accordance with this section. Such approval may be required
10 whether the transfer is within the management area, from inside
11 to outside the management area, or from outside to inside the
12 management area, except that transfers for which permits have been
13 obtained from the Department of Natural Resources prior to July 16,
14 2004, or pursuant to the Municipal and Rural Domestic Ground Water
15 Transfers Permit Act shall not be subject to district approval
16 pursuant to this subdivision. If the district adopts rules and
17 regulations pursuant to this subdivision, such regulations shall
18 require that the district deny or condition the approval of any
19 such transfer when and to the extent such action is necessary to
20 (A) ensure the consistency of the transfer with the purpose or
21 purposes for which the management area was designated, (B) prevent
22 adverse effects on other ground water users or on surface water
23 appropriators, (C) prevent adverse effects on the state's ability
24 to comply with an interstate compact or decree or to fulfill the
25 provisions of any other formal state contract or agreement, and (D)
26 otherwise protect the public interest and prevent detriment to the
27 public welfare;

1 (1) It may require, when conditions so permit, that
2 new or replacement water wells to be used for domestic or other
3 purposes shall be constructed to such a depth that they are less
4 likely to be affected by seasonal water level declines caused by
5 other water wells in the same area;

6 (m) It may close all or a portion of the management
7 area to the issuance of additional permits or may condition the
8 issuance of additional permits on compliance with other rules and
9 regulations adopted and promulgated by the district to achieve the
10 purpose or purposes for which the management area was designated;
11 and

12 (n) It may adopt and promulgate such other reasonable
13 rules and regulations as are necessary to carry out the purpose for
14 which a management area was designated.

15 (2) In adopting, amending, or repealing any control
16 authorized by subsection (1) of this section or sections 46-740
17 and 46-741, the district's considerations shall include, but not
18 be limited to, whether it reasonably appears that such action will
19 mitigate or eliminate the condition which led to designation of the
20 management area or will improve the administration of the area.

21 (3) Upon request by the district or when any of
22 the controls being proposed are for the purpose of integrated
23 management of hydrologically connected ground water and surface
24 water, the Director of Natural Resources shall review and comment
25 on the adoption, amendment, or repeal of any authorized control
26 in a management area. The director may hold a public hearing to
27 consider testimony regarding the control prior to commenting on the

1 adoption, amendment, or repeal of the control. The director shall
2 consult with the district and fix a time, place, and date for
3 such hearing. In reviewing and commenting on an authorized control
4 in a management area, the director's considerations shall include,
5 but not be limited to, those enumerated in subsection (2) of this
6 section.

7 (4) If because of varying ground water uses, varying
8 surface water uses, different irrigation distribution systems, or
9 varying climatic, hydrologic, geologic, or soil conditions existing
10 within a management area the uniform application throughout such
11 area of one or more controls would fail to carry out the intent
12 of the Nebraska Ground Water Management and Protection Act in a
13 reasonably effective and equitable manner, the controls adopted
14 by the district pursuant to this section may contain different
15 provisions for different categories of ground water use or portions
16 of the management area which differ from each other because of
17 varying climatic, hydrologic, geologic, or soil conditions. Any
18 differences in such provisions shall recognize and be directed
19 toward such varying ground water uses or varying conditions. Except
20 as otherwise provided in this section, if the district adopts
21 different controls for different categories of ground water use,
22 those controls shall be consistent with section 46-613 and shall,
23 for each such category, be uniform for all portions of the area
24 which have substantially similar climatic, hydrologic, geologic,
25 and soil conditions.

26 (5) The district may establish different water
27 allocations for different irrigation distribution systems.

1 (6) (a) The district may establish different provisions
2 for different hydrologic relationships between ground water and
3 surface water.

4 (b) For management areas a purpose of which is the
5 integrated management of hydrologically connected ground water and
6 surface water, the district may establish different provisions for
7 water wells either permitted or constructed before the designation
8 of a management area for integrated management of hydrologically
9 connected ground water and surface water and for water wells
10 either permitted or constructed on or after the designation date
11 or any other later date or dates established by the district.
12 Permits for construction of new wells not completed by the date
13 of the determination of fully appropriated shall be subject to any
14 conditions imposed by the applicable natural resources district.

15 (c) For a management area in a river basin or part
16 of a river basin that is or was the subject of litigation over
17 an interstate water compact or decree in which the State of
18 Nebraska is a named defendant, the district may establish different
19 provisions for restriction of water wells constructed after January
20 1, 2001, if such litigation was commenced before or on May 22,
21 2001. If such litigation is commenced after May 22, 2001, the
22 district may establish different provisions for restriction of
23 water wells constructed after the date on which such litigation
24 is commenced in federal court. An appeal from a decision of
25 the district under this subdivision shall be in accordance with
26 the hearing procedures established in the Nebraska Ground Water
27 Management and Protection Act.

1 (d) Except as otherwise authorized by law, the district
2 shall make a replacement water well as defined in section 46-602,
3 or as further defined in district rules and regulations, subject to
4 the same provisions as the water well it replaces.

5 (7) If the district has included controls delineated in
6 subdivision (1)(m) of this section in its management plan, but has
7 not implemented such controls within two years after the initial
8 public hearing on the controls, the district shall hold a public
9 hearing, as provided in section 46-712, regarding the controls
10 before implementing them.

11 ~~(8) Whenever a management area designated under section~~
12 ~~46-712 or 46-725 or sections 46-713 to 46-719 encompasses portions~~
13 ~~of two or more districts, the responsibilities and authorities~~
14 ~~delegated in this section and sections 46-740 and 46-741 shall~~
15 ~~be exercised jointly and uniformly by agreement of the respective~~
16 ~~boards of all districts so affected. Whenever management areas~~
17 ~~designated by two or more districts adjoin each other, the~~
18 ~~districts are encouraged to exercise the responsibilities and~~
19 ~~authorities jointly and uniformly by agreement of the respective~~
20 ~~boards.~~

21 ~~(9)~~ (8) In addition to the controls listed in subsection
22 (1) of this section, a district in which a management area has
23 been designated may also adopt and implement one or more of the
24 following measures if it determines that any such measures would
25 help the district and water users achieve the goals and objectives
26 of the management area: (a) It may sponsor nonmandatory educational
27 programs; and (b) it may establish and implement financial or

1 other incentive programs. As a condition for participation in
2 an incentive program, the district may require water users or
3 landowners to enter into and perform such agreements or covenants
4 concerning the use of land or water as are necessary to produce the
5 benefits for which the incentive program is established.

6 Sec. 28. Section 46-740, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 46-740 (1) If allocation is adopted for use of ground
9 water for irrigation purposes in a management area, the permissible
10 withdrawal of ground water shall be allocated equally per irrigated
11 acre except as permitted by subsections (4) through (6) of
12 section 46-739. Such allocation shall specify the total number
13 of acre-inches that are allocated per irrigated acre per year,
14 except that the district may allow a ground water user to average
15 his or her allocation over any reasonable period of time. A ground
16 water user may use his or her allocation on all or any part of
17 the irrigated acres to which the allocation applies or in any other
18 manner approved by the district.

19 (2) Except as permitted pursuant to subsections (4)
20 through (6) of section 46-739, if annual rotation or reduction of
21 irrigated acres is adopted for use of ground water for irrigation
22 purposes in a management area, the nonuse of irrigated acres shall
23 be a uniform percentage reduction of each landowner's irrigated
24 acres within the management area or a subarea of the management
25 area. Such uniform reduction may be adjusted for each landowner
26 based upon crops grown on his or her land to reflect the varying
27 consumptive requirements between crops.

1 (3) Unless an integrated management plan, a rule, or an
2 order is established, adopted, or issued prior to November 1, 2005,
3 no integrated management plan, rule, or order shall limit the use
4 of ground water by a municipality, within an area determined by
5 the department to be fully appropriated pursuant to section 46-714
6 or designated as overappropriated pursuant to section 46-713, until
7 January 1, 2026, except that:

8 (a) Any allocations to a municipality that have been made
9 as of November 1, 2005, shall remain in full force and effect
10 unless changed by the appropriate natural resources district;

11 (b) For any municipality that has not received an
12 allocation as of November 1, 2005, the minimum annual allocation
13 may be the greater of either the amount of ground water authorized
14 by a permit issued pursuant to the Municipal and Rural Domestic
15 Ground Water Transfers Permit Act or the governmental, commercial,
16 and industrial uses of the municipality plus a per capita
17 allowance. Water for commercial and industrial uses may be limited
18 as specified in subdivision (b)(ii) of this subsection.

19 (i) The per capita allowance shall be based on the
20 location of the municipality, increasing in equal increments from
21 east to west and shall not be less than two hundred gallons per
22 person per day at 95 degrees, 19 minutes, 00 seconds longitude
23 and not less than two hundred fifty gallons per person per day at
24 104 degrees, 04 minutes, 00 seconds longitude. Persons served by
25 a municipality outside of its corporate limits shall be considered
26 part of the municipality's population if such service begins prior
27 to January 1, 2026.

1 (ii) Prior to January 1, 2026, any new or expanded
2 single commercial or single industrial development served by any
3 municipality within the fully appropriated or overappropriated
4 area which, after the operative date of this section, commences
5 water use resulting in the consumptive use of water in amounts
6 greater than twenty-five million gallons annually may be subject to
7 controls adopted pursuant to section 46-715;

8 (c) Prior to January 1, 2026, increases in the
9 consumptive use of water by a municipality that result in a
10 decrease in streamflow shall be addressed by the integrated
11 management plan pursuant to controls or incentive programs
12 adopted pursuant to section 46-715 and shall not affect the
13 municipal allocations outlined in subdivisions (3)(a) and (b)
14 of this section. Any permanent reduction in consumptive use of
15 water associated with municipal growth, including governmental,
16 industrial, and commercial growth, during the period between the
17 operative date of this section and January 1, 2026, shall accrue
18 to the benefit of the natural resources district within which such
19 municipality is located; and

20 (d) To qualify for the exemption specified in subsection
21 (3) of this section, any city of the metropolitan class, city of
22 the primary class, city of the first class, or city of the second
23 class shall file a conservation plan with the natural resources
24 district, if required by the integrated management plan. Villages
25 and other municipalities smaller than a city of the second class
26 shall not be required to submit a conservation plan to qualify for
27 such exemption.

1 (4) On and after January 1, 2026, the base amount for
2 an annual allocation to a municipality shall be determined as
3 the greater of either (a) the amount of water authorized by a
4 permit issued pursuant to the Municipal and Rural Domestic Ground
5 Water Transfers Permit Act or (b) the greatest annual use prior
6 to January 1, 2026, for uses specified in subdivision (3)(b) of
7 this section plus the per capita allowance described in subdivision
8 (3)(b)(i) of this section. On and after January 1, 2026, increases
9 in the consumptive use of water by a municipality that result
10 in a decrease in streamflow shall be addressed by the integrated
11 management plan pursuant to controls or incentive programs adopted
12 pursuant to section 46-715. Each municipality may be subject to
13 controls adopted pursuant to such section for amounts in excess of
14 the allocations.

15 (5) Unless an integrated management plan, rule, or order
16 is established, adopted, or issued prior to November 1, 2005,
17 no integrated management plan, rule, or order shall limit the
18 use of ground water by a nonmunicipal commercial or industrial
19 water user within an area determined by the department to be
20 fully appropriated pursuant to section 46-714 or designated as
21 overappropriated pursuant to section 46-713, until January 1, 2026,
22 except that:

23 (a) Prior to January 1, 2026, the minimum annual
24 allocation for a nonmunicipal commercial or industrial user shall
25 be the greater of either (i) the amount specified in a permit
26 issued pursuant to the Industrial Ground Water Regulatory Act or
27 (ii) the amount necessary to achieve the commercial or industrial

1 use, including all new or expanded uses that consume less
2 than twenty-five million gallons annually. Any increases in the
3 consumptive use of water by a nonmunicipal commercial or industrial
4 water user that result in a decrease in streamflow shall be
5 addressed by the integrated management plan pursuant to controls or
6 incentive programs adopted pursuant to section 46-715;

7 (b) Prior to January 1, 2026, any new or expanded single
8 commercial or industrial development served by a nonmunicipal
9 well within an area determined by the department to be fully
10 appropriated pursuant to section 46-714 or designated as
11 overappropriated pursuant to section 46-713 which, after the
12 operative date of this section, commences water use resulting in
13 the consumptive use of water in amounts greater than twenty-five
14 million gallons annually may be subject to controls adopted
15 pursuant to section 46-715;

16 (c) On and after January 1, 2026, the base amount
17 for an annual allocation to a nonmunicipal commercial or
18 industrial user within an area determined by the department to
19 be fully appropriated pursuant to section 46-714 or designated as
20 overappropriated pursuant to section 46-713 shall be the amount
21 specified in subdivision (5)(a) or (b) of this section;

22 (d) On and after January 1, 2026, increases in the
23 consumptive use of water by a nonmunicipal commercial or industrial
24 water user that result in a decrease in streamflow shall be
25 addressed by the integrated management plan pursuant to controls or
26 incentive programs adopted pursuant to section 46-715; and

27 (e) Any reduction in consumptive use associated with new

1 nonmunicipal industrial or commercial uses of less than twenty-five
2 million gallons, during the period between the operative date of
3 this section and January 1, 2026, shall accrue to the benefit
4 of the natural resources district within which such nonmunicipal
5 industrial or commercial user is located.

6 Sec. 29. Section 61-205, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 61-205 The Department of Natural Resources shall exercise
9 the powers and perform the duties assigned to the Department of
10 Water Resources prior to July 1, 2000. The Department of Natural
11 Resources shall exercise the powers and perform the duties assigned
12 to the Nebraska Natural Resources Commission prior to July 1, 2000,
13 except as otherwise specifically provided.

14 The Director of Natural Resources and his or her duly
15 authorized assistants shall have access at all reasonable times
16 to all dams, reservoirs, hydroelectric plants, water measuring
17 devices, and headgates, and other devices for diverting water, for
18 the purpose of performing the duties assigned to the department.

19 Sec. 30. Section 77-3442, Revised Statutes Supplement,
20 2005, is amended to read:

21 77-3442 (1) Property tax levies for the support of local
22 governments for fiscal years beginning on or after July 1, 1998,
23 shall be limited to the amounts set forth in this section except as
24 provided in section 77-3444.

25 (2)(a) Except as provided in subdivision (2)(b) of this
26 section, school districts and multiple-district school systems may
27 levy a maximum levy of (i) one dollar and five cents per one

1 hundred dollars of taxable valuation of property subject to the
2 levy for fiscal years 2003-04 through 2007-08 and (ii) one dollar
3 per one hundred dollars of taxable valuation of property subject to
4 the levy for all fiscal years except fiscal years 2003-04 through
5 2007-08. Excluded from this limitation are amounts levied to pay
6 for sums agreed to be paid by a school district to certificated
7 employees in exchange for a voluntary termination of employment
8 and amounts levied to pay for special building funds and sinking
9 funds established for projects commenced prior to April 1, 1996,
10 for construction, expansion, or alteration of school district
11 buildings. For purposes of this subsection, commenced means any
12 action taken by the school board on the record which commits
13 the board to expend district funds in planning, constructing, or
14 carrying out the project.

15 (b) Federal aid school districts may exceed the maximum
16 levy prescribed by subdivision (2)(a) of this section only to
17 the extent necessary to qualify to receive federal aid pursuant
18 to Title VIII of Public Law 103-382, as such title existed on
19 September 1, 2001. For purposes of this subdivision, federal
20 aid school district means any school district which receives ten
21 percent or more of the revenue for its general fund budget from
22 federal government sources pursuant to Title VIII of Public Law
23 103-382, as such title existed on September 1, 2001.

24 (c) For school fiscal year 2002-03 through school fiscal
25 year 2007-08, school districts and multiple-district school systems
26 may, upon a three-fourths majority vote of the school board of
27 the school district, the board of the unified system, or the

1 school board of the high school district of the multiple-district
2 school system that is not a unified system, exceed the maximum
3 levy prescribed by subdivision (2)(a) of this section in an amount
4 equal to the net difference between the amount of state aid that
5 would have been provided under the Tax Equity and Educational
6 Opportunities Support Act without the temporary aid adjustment
7 factor and if subdivision (3) of section 79-1007.02 and subsections
8 (2) and (5) of section 79-1008.01 had applied for the ensuing
9 school fiscal year for the school district or multiple-district
10 school system and the amount provided with the temporary aid
11 adjustment factor and if subdivision (4) of section 79-1007.02
12 and subsections (3) and (6) of section 79-1008.01 had applied.
13 The State Department of Education shall certify to the school
14 districts and multiple-district school systems the amount by which
15 the maximum levy may be exceeded for the next school fiscal
16 year pursuant to subdivision (2)(c) of this section on or before
17 February 15 for school fiscal years 2004-05 through 2007-08.

18 (3) Community colleges may levy a maximum levy on each
19 one hundred dollars of taxable property subject to the levy of
20 seven cents, plus amounts allowed under subsection (7) of section
21 85-1536.01, except that any community college whose valuation per
22 reported aid equivalent student as defined in section 85-1503 was
23 less than eighty-two percent of the average valuation per statewide
24 reimbursable reported aid equivalent total as defined in section
25 85-1503 for all community colleges for fiscal year 1997-98 may levy
26 up to an additional one-half cent for each of fiscal years 2005-06
27 and 2006-07 upon a three-fourths majority vote of the board.

1 (4) Natural resources districts may levy a maximum levy
2 of four and one-half cents per one hundred dollars of taxable
3 valuation of property subject to the levy. Natural resources
4 districts shall also have the power and authority to levy a
5 tax equal to the dollar amount by which their restricted funds
6 budgeted to administer and implement ground water management
7 activities and integrated management activities under the Nebraska
8 Ground Water Management and Protection Act exceed their restricted
9 funds budgeted to administer and implement ground water management
10 activities and integrated management activities for FY2003-04,
11 not to exceed one cent on each one hundred dollars of taxable
12 valuation annually on all of the taxable property within the
13 district. In addition, natural resources districts located in
14 a river basin, subbasin, or reach that has been determined to
15 be fully appropriated pursuant to section 46-714 or designated
16 overappropriated pursuant to section 46-713 by the Department of
17 Natural Resources shall also have the power and authority to
18 levy a tax equal to the dollar amount by which their restricted
19 funds budgeted to administer and implement ground water management
20 activities and integrated management activities under the Nebraska
21 Ground Water Management and Protection Act exceed their restricted
22 funds budgeted to administer and implement ground water management
23 activities and integrated management activities for FY2005-06, not
24 to exceed three cents on each one hundred dollars of taxable
25 valuation on all of the taxable property within the district for
26 fiscal year 2006-07 and not to exceed two cents on each one
27 hundred dollars of taxable valuation annually on all of the taxable

1 property within the district for fiscal years 2007-08 and 2008-09.

2 (5) Educational service units may levy a maximum levy of
3 one and one-half cents per one hundred dollars of taxable valuation
4 of property subject to the levy.

5 (6)(a) Incorporated cities and villages which are not
6 within the boundaries of a municipal county may levy a maximum levy
7 of forty-five cents per one hundred dollars of taxable valuation
8 of property subject to the levy plus an additional five cents per
9 one hundred dollars of taxable valuation to provide financing for
10 the municipality's share of revenue required under an agreement
11 or agreements executed pursuant to the Interlocal Cooperation Act
12 or the Joint Public Agency Act. The maximum levy shall include
13 amounts levied to pay for sums to support a library pursuant
14 to section 51-201, museum pursuant to section 51-501, visiting
15 community nurse, home health nurse, or home health agency pursuant
16 to section 71-1637, or statue, memorial, or monument pursuant to
17 section 80-202.

18 (b) Incorporated cities and villages which are within the
19 boundaries of a municipal county may levy a maximum levy of ninety
20 cents per one hundred dollars of taxable valuation of property
21 subject to the levy. The maximum levy shall include amounts paid
22 to a municipal county for county services, amounts levied to pay
23 for sums to support a library pursuant to section 51-201, a museum
24 pursuant to section 51-501, a visiting community nurse, home health
25 nurse, or home health agency pursuant to section 71-1637, or a
26 statue, memorial, or monument pursuant to section 80-202.

27 (7) Sanitary and improvement districts which have been in

1 existence for more than five years may levy a maximum levy of forty
2 cents per one hundred dollars of taxable valuation of property
3 subject to the levy, and sanitary and improvement districts which
4 have been in existence for five years or less shall not have
5 a maximum levy. Unconsolidated sanitary and improvement districts
6 which have been in existence for more than five years and are
7 located in a municipal county may levy a maximum of eighty-five
8 cents per hundred dollars of taxable valuation of property subject
9 to the levy.

10 (8) Counties may levy or authorize a maximum levy of
11 fifty cents per one hundred dollars of taxable valuation of
12 property subject to the levy, except that five cents per one
13 hundred dollars of taxable valuation of property subject to the
14 levy may only be levied to provide financing for the county's
15 share of revenue required under an agreement or agreements executed
16 pursuant to the Interlocal Cooperation Act or the Joint Public
17 Agency Act. The maximum levy shall include amounts levied to pay
18 for sums to support a library pursuant to section 51-201 or museum
19 pursuant to section 51-501. The county may allocate up to fifteen
20 cents of its authority to other political subdivisions subject
21 to allocation of property tax authority under subsection (1) of
22 section 77-3443 and not specifically covered in this section to
23 levy taxes as authorized by law which do not collectively exceed
24 fifteen cents per one hundred dollars of taxable valuation on any
25 parcel or item of taxable property. The county may allocate to
26 one or more other political subdivisions subject to allocation
27 of property tax authority by the county under subsection (1) of

1 section 77-3443 some or all of the county's five cents per one
2 hundred dollars of valuation authorized for support of an agreement
3 or agreements to be levied by the political subdivision for the
4 purpose of supporting that political subdivision's share of revenue
5 required under an agreement or agreements executed pursuant to the
6 Interlocal Cooperation Act or the Joint Public Agency Act. If an
7 allocation by a county would cause another county to exceed its
8 levy authority under this section, the second county may exceed the
9 levy authority in order to levy the amount allocated.

10 (9) Municipal counties may levy or authorize a maximum
11 levy of one dollar per one hundred dollars of taxable valuation
12 of property subject to the levy. The municipal county may allocate
13 levy authority to any political subdivision or entity subject to
14 allocation under section 77-3443.

15 (10) Property tax levies for judgments, except judgments
16 or orders from the Commission of Industrial Relations, obtained
17 against a political subdivision which require or obligate a
18 political subdivision to pay such judgment, to the extent such
19 judgment is not paid by liability insurance coverage of a
20 political subdivision, for preexisting lease-purchase contracts
21 approved prior to July 1, 1998, for bonded indebtedness approved
22 according to law and secured by a levy on property, and for
23 payments by a public airport to retire interest-free loans from the
24 Department of Aeronautics in lieu of bonded indebtedness at a lower
25 cost to the public airport are not included in the levy limits
26 established by this section.

27 (11) The limitations on tax levies provided in this

1 section are to include all other general or special levies
2 provided by law. Notwithstanding other provisions of law, the
3 only exceptions to the limits in this section are those provided by
4 or authorized by sections 77-3442 to 77-3444.

5 (12) Tax levies in excess of the limitations in this
6 section shall be considered unauthorized levies under section
7 77-1606 unless approved under section 77-3444.

8 (13) For purposes of sections 77-3442 to 77-3444,
9 political subdivision means a political subdivision of this state
10 and a county agricultural society.

11 Sec. 31. Sections 4, 30, 31, 32, and 34 of this act
12 become operative on their effective date. The other sections of
13 this act become operative three calendar months after adjournment
14 of this legislative session.

15 Sec. 32. Original section 2-3225, Revised Statutes
16 Cumulative Supplement, 2004, and section 77-3442, Revised Statutes
17 Supplement, 2005, are repealed.

18 Sec. 33. Original sections 46-229.02, 46-229.03,
19 46-229.04, 46-290, 46-291, 46-294.01, 46-2,112, 46-2,136, 46-602,
20 46-655.01, 46-683, 46-691.03, 46-701, 46-706, 46-712, 46-713,
21 46-714, 46-715, 46-719, 46-739, 46-740, and 61-205, Reissue Revised
22 Statutes of Nebraska, and sections 2-945.01, 2-1588, and 2-3240,
23 Revised Statutes Cumulative Supplement, 2004, are repealed.

24 Sec. 34. Since an emergency exists, this act takes effect
25 when passed and approved according to law.